TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1927

Roy O. West, No. [redacted] 71

~~HUBERT WORK~~, SECRETARY OF THE INTERIOR, PETITIONER

vs.

STANDARD OIL COMPANY

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED FEBRUARY 16, 1928
CERTIORARI GRANTED MARCH 19, 1928

(33223)

the qn is not wh the land known to be mineral - but rather whether, because of the hearing order of June 8 1921, wh had passed to the state it was the duty has no jurisdiction now to investigate and determine the question.

The order dismissing the proceedings was not necessary - and does not purport to be a determination of the question.

At the commencement of inspection, on which the Jan 14 is proceedings were commenced, was that the land was known to be mineral prior to the survey.-

(b) The order of Mch 2 1921 when Com'r of G.L.O. ordered a renewal of the proceedings directed the R & R a hearing to proceed under Cir. of 2/26. 16-(46 L.D. 572) - and to ~~find~~ find wh of the G.L.O. Chief Atty - ① land is mineral. ② that it was known to be so prior to the acceptance of the survey 1/26/03 =

-C- The question was then open- (cf R. 67. Mch 21 see if not asked Dy to take affirmative action through the Courts to protect interest pending final action under R.R. 1 L.D.

(c) The land appears to have been in the Navy reserve area. The Secy of Navy was interested to have oil for the Navy - all. AG. See N v Chambers cases referred to supra Note etc if an early hearing could be had to determine the character of the land - d.68 The Int Dept can commence an early hearing to determine the character of the land' agree no action should be taken until a det by Dept of Int as to the known mineral character of the lands"

(b) - The record of the hearing before Fall does not disclose that the matter of fact was found on - the order read in the light of all the circumstances, fairly may be said to leave the matter open #

h - Assuming equity would enjoin, if the title had finally + irrevocably passed by a determination that the land was not known to be mineral when the survey was acceptd, the injunction in this case should be denied

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 771

HUBERT WORK, SECRETARY OF THE INTERIOR, PETITIONER

vs.

STANDARD OIL COMPANY

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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a Supreme Court of the District of Columbia

STANDARD OIL COMPANY, A CORPORATION, plaintiff, vs. HUBERT WORK, AS SECRETARY OF THE Interior, defendant } No. 44747. In equity

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered that in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill of complaint*

Filed October 9, 1925

In the Supreme Court of the District of Columbia

STANDARD OIL COMPANY, A CORPORATION, plaintiff, vs. HUBERT WORK, AS SECRETARY OF THE Interior, defendant } No. 44747. In equity

To the Supreme Court of the District of Columbia:

Plaintiff, Standard Oil Company, states as follows:

I. Plaintiff, Standard Oil Company, is a corporation duly organized and existing under the laws of the State of California, having its principal office and place of business in the city and county of San Francisco, in said State, and brings this action in its own name and right because of the matters and things hereinafter particularly narrated.

II. Defendant, Hubert Work, is a citizen of the United States, a resident of the city of Washington, in the District of Columbia, and is and ever since the fifth day of March, 1923, has been the Secretary of the Interior, and as such is sued herein for things done and
2 threatened to be done by him or under his direction and control with respect to the matters and things next above referred to. Such matters and things in whole or in part pertain to and if permitted to be done as threatened will affect the status of and/or title to certain lands, formerly public lands of the United States, constituting and designated as the west half (W. ½) and the west half of the east half (W. ½ of E. ½) and lots five (5), six (6), seven (7), eight (8), eleven (11), and twelve (12) in said east half (lots 5, 6, 7, 8, 11, and 12 of E. ½) of section thirty-six (36), township thirty (30) south, range twenty-three (23) east, Mount Diablo base and meridian, all of said lands lying and being within the limits of Kern County, in the State of California. The right to all of said lands, together with the possession and to the continued possession

thereof, is vested in and claimed by this plaintiff, the same having been acquired by this plaintiff lawfully and completely in the following manner:

III. By section 6 of the act of Congress approved March 3, 1853, entitled "An act to provide for the survey of the public lands in California, the granting of preemption rights therein, and for other purposes" (10 Stats. L. 244, Ch. CXLV), it was provided and declared:

"That all the public lands in the State of California, whether surveyed or unsurveyed, with the exception of sections sixteen and thirty-six, which shall be, and hereby are, granted to the State for the purposes of public schools in each township, and with the exception of * * * the mineral lands, shall be subject to the preemption laws * * * and shall after the plats thereof are returned to the office of the register, be offered for sale, after six months' public notice in the State of the time and place of sale, under the laws, rules, and regulations now governing such sales, or such as may be hereafter prescribed; * * *"

By section 7 of said act it was further provided:

"That where any settlement by the erection of a dwelling
3 house or the cultivation of any portion of the land, shall be made upon the sixteenth and thirty-sixth sections, before the same shall be surveyed, or where such sections may be reserved for public uses or taken by private claims, other land shall be selected by the proper authorities of the State in lieu thereof, agreeably to the provisions of the act of Congress approved on the twentieth of May, eighteen hundred and twenty-six, entitled, &c., &c., and which shall be subject to approval by the Secretary of the Interior. And no person shall make a settlement or location upon any tract or parcel of land selected for a military post * * *; nor shall any person obtain the benefits of this act by a settlement or location on mineral lands."

Section 1 of said act (of March 3, 1853) contained provision for appointment by the President, by and with the advice and consent of the Senate, of a surveyor general for the district or State of California; and by

Section 3 it was provided that said surveyor general should cause to be surveyed, measured, and marked the

"base and meridian lines through such points, and perpetuated by such monuments as may be prescribed, and also to survey and establish the other lines of the public lands, * * * Provided, That none other than township lines shall be surveyed when the lands are mineral or are deemed unfit for cultivation; * * *"

Said grant of school land was a self-executing grant in praesenti, and no patent, certificate, or other evidence of title is or ever has been required or provided to be issued by the United States to the State of California or its successors in interest to vest title under the terms of said grant.

Portions of said township thirty (30) south, range twenty-three (23) east, M. D. B. & M., to wit, sections one (1) to thirteen (13), inclusive, and parts of sections fourteen (14), nineteen (19), thirty (30), and thirty-two (32) and all of sections eighteen (18) and thirty-one (31) were surveyed in or about the year 1856 by one

Brice M. Henry and the plat of said survey duly filed and
4 approved by the Commissioner of the General Land Office in the year 1856. The balance of said township, to wit, portions of said sections fourteen (14), seventeen (17), nineteen (19), thirty (30), and thirty-two (32) and sections fifteen (15), sixteen (16), twenty (20) to twenty-nine (29), inclusive, and sections thirty-three (33) to thirty-six (36), inclusive, being all the lands in said township which had not been surveyed in 1856 as aforesaid, were surveyed and the survey completed on December 20, 1901. The plat of the survey was approved by the United States Surveyor General on August 1, 1902. It was accepted by the Commissioner of the General Land Office on January 26, 1903, and plaintiff is informed and believes and therefore avers that title to said section 36 vested in the State of California as of said date last aforesaid. The plat of the survey was filed in the United States local land office at Visalia, California, on May 16, 1903.

IV. By order dated February 28, 1900, the Commissioner of the General Land Office directed the register and receiver at Visalia, California, to suspend from disposition until further order said township 30 south, range 23 east, M. D. B. & M., and certain other townships in said order specified. A copy of said order is hereto attached and marked "Exhibit A" and hereby made a part hereof.

By order dated July 19, 1900, the said order of February 28, 1900, was "continued for a reasonable time pending inquiry as to the true character of the land, which is now in progress." A copy of said order of July 19, 1900, is hereto attached and marked "Exhibit B" and hereby made a part hereof.

A special agent of the General Land Office was thereupon
5 directed to examine and report upon the character of said suspended lands. Thereafter the special agent submitted reports on the character of said lands to the Department of the Interior and various restorations of said lands were made by the Secretary of the Interior.

By letter from the Acting Commissioner of the General Land Office, dated February 11, 1904, and by letter from the Commissioner of the General Land Office, dated February 20, 1904, the register and receiver of said Visalia land office were advised that the order suspending said land from disposition under the agricultural land laws was made on account of their alleged mineral (oil) character, and that after examination certain of said suspended lands, including certain lands in said township 30 south, range 23 east, were relieved from suspension, no oil or other mineral having been discovered thereon. Copies of said letters dated February 11, 1904, and February 20, 1904, are hereto attached and marked "Exhibits C and D" and hereby made a part hereof.

By report bearing date March 22, 1904, the agent designated to make an examination of the lands embraced in said order of suspension reported further on the mineral character of said suspended lands, recommending that certain of said lands be suspended from agricultural entry, and that others of said lands, including said section 36, be relieved from suspension. A copy of said report of said agent is hereto attached and marked "Exhibit E" and hereby made a part hereof.

Thereupon by order dated April 5, 1904, the Acting Commissioner of the General Land Office relieved said section
6 36 and said other lands from suspension and determined that said section 36 and said other lands were nonmineral lands, and plaintiff represents that thereupon the title of the State of California to said section was finally determined and settled. A copy of said order dated April 5, 1904, is hereto attached, marked "Exhibit F," and hereby made a part hereof.

V. Under the regulations and decisions of the Department of the Interior in force at the time of the acceptance and filing of the plat showing the survey of said section 36, and pursuant to published decisions of the courts of the United States, a 16th or 36th school section was deemed mineral character or not according to whether mineral had been discovered thereon or not. It was provided by the regulations of the department of March 6, 1903 (32 Land Dec. 39):

"RULE 2. The State will not be permitted to make selection in lieu of land within a school section alleged to be mineral in character and for that reason excepted from its grant, whether returned by the Surveyor General as mineral or otherwise, in the absence of satisfactory proof that the base land was known to be chiefly valuable for mineral at the date when the State's right thereto would have attached, if at all. The proof must show the kind of mineral discovered upon the land and the extent thereof, when and by whom the discoveries were made, etc., etc. If in any case the proof does not clearly show that the base land was known to contain valuable mineral deposits and to be chiefly valuable on account of such deposits at the date the State's right would have attached thereto, a selection in lieu thereof will not be permitted."

By reason of said regulation and others, and of said decisions of the Land Office and of the courts of the United States, as this plaintiff is informed and believes, and therefore avers, the rule that a 16th or 36th school section could not be considered to be mineral unless mineral had actually been discovered upon the land was a rule of property in force at the date of the acceptance and of the filing of the survey of said section 36; that neither at the date of the acceptance or filing of said survey or at any time prior to 1919
7 had any mineral of any kind been known to exist or been discovered on said land, and that pursuant to the rules and decisions of the Department of the Interior the title of the State of California and its grantees to said section 36 became vested in the State of California as of the date of the acceptance of the survey thereof.

No oil was discovered in any portion of said township 30 south, range 23 east, M. D. B. & M., prior to January 26, 1903, nor was there any mineral development in said township prior to the year 1904 nor at any time prior to 1911.

VI. Said section 36 is a portion of the land known as the Elk Hills, and no oil was at any time discovered in said Elk Hills until subsequent to the year 1910. The oil structure of said Elk Hills, as determined by explorations conducted subsequent to the year 1910, is a separate and distinct structure in no way related to or connected with any other structure and entirely independent of any other oil fields.

Attached hereto and marked "Exhibit G" and hereby referred to and made a part hereof is a true copy of an enlargement of a map of a portion of Kern County, showing the location of the McKittrick, Sunset, and Kern River oil districts, which map was published by the California State mining bureau in the year 1900. No oil wells or mineral development existed at any time prior to the year 1904 on the townships or portions thereof, on which no wells are shown on said enlargement of said map. There are also shown on said map the lands suspended from entry in the year 1900, as hereinbefore set forth, and the lands relieved from suspension in the year 1904, as hereinbefore set forth.

VII. On January 24, 1908, and prior to the purchase of said land from the State of California by the predecessors in interest of plaintiff, as hereinafter alleged, the U. S. land office at Visalia, California, certified to the State surveyor general of the State of California that there was no adverse claim to that of the State of California to all of said section 36. A copy of said certificate is hereto attached, marked "Exhibit H," and is hereby referred to and specifically made a part hereof.

8

VIII. On the 3rd day of January, 1901, one Alice J. Miller applied to the State of California for a certificate of purchase for all of said section 36, paying therefor the sum of $160, being the initial payment required by law upon the purchase of school lands in the State of California. Subsequently, and on the 2nd day of July, 1902, the right, title, and interest of said Alice J. Miller under certificate of purchase issued to her pursuant to said application was sold to the State of California for delinquent taxes, penalties, costs, and charges, amounting to $3.28, and thereafter, pursuant to said tax sale, a deed of her interest in and to said section was made to the State of California on the 2nd day of July, 1907, and said deed was filed with the surveyor general of the State of California on September 28, 1907.

9

Thereafter, on August 25th, 1908, one George Hay and one M. W. Buffington redeemed said section 36 from the sale for taxes assessed against Alice J. Miller and pursuant to which said section had been sold to the State of California as hereinbefore set forth and pursuant to said redemption said land pursuant to the statutes of the State of California in such cases made and provided again became subject to purchase from the State of California.

On August 24th, 1908, said George Hay applied to the State of California to purchase 480 acres, being the west half (W. ½) and the west half (W. ½) of the east half (E. ½) of said section 36, for the sum of $1.25 per acre, and certificate of purchase for said 480 acres was duly issued by the State of California to said George Hay on January 5th, 1909, evidencing his right to purchase said 480 acres in said section upon completion of payment therefor, as required by law. A copy of said application is hereto annexed, marked "Exhibit I," and is hereby referred to and made a part hereof. Thereafter payment of the purchase price of $1.25 per acre for said land was made by said George Hay to the State of California. On the 29th day of November, 1909, Oscar Sutro, as agent for the plaintiff, purchased from said Hay, for the sum of $11,000, said Hay's interest in said 480 acres. On January 31, 1910,

the State of California issued its patent to said Oscar Sutro and said Oscar Sutro thereupon deeded said land to plaintiff.

On August 24th, 1908, Mason W. Buffington applied to the State surveyor general of the State of California to purchase lots 1, 2, 5, 6, 7, 8, 11, and 12 in said section 36 in the manner required by law; and thereafter, and on the 5th day of January, 1909, a certificate of purchase was issued to said Buffington evidencing his right to complete the purchase of said lands described in his application, for the sum of $1.25 per acre, and to receive patent therefore upon completing the payments required by law. A copy of the application of said Buffington is hereto attached and marked "Exhibit J," and hereby referred to and made a part hereof. Thereafter payment of the purchase price of $1.25 per acre for said land was made by said Mason W. Buffington to the State of California.

On August 21, 1909, said Buffington entered into an agreement with one F. J. Carman for the sale to said Carman of said lots 5, 6, 7, 8, 11, and 12 in said section 36, embracing 158.82 acres for the sum of $3,180.00, upon the issue of patent therefor by the State of California.

Thereupon the State of California issued its patent dated January 20, 1910, to said Mason W. Buffington for said lots 1, 2, 5, 6, 7, 8, 11, and 12 and by deed dated January 25, 1910, said Buffington deeded said lots 5, 6, 7, 8, 11, and 12 to said F. J. Carman pursuant to the contract hereinbefore referred to. Said Carman thereupon deeded an undivided half interest in said lots to G. O. Fairbank.

Thereafter on, to wit, May 25, 1919, said F. J. Carman and said G. O. Fairbank, in consideration of the sum of $100,000 paid to them by plaintiff, entered into a contract with plaintiff for the development of said portions of said section 36, and for the sharing of the net proceeds of the oil and gas produced pursuant to said development, and thereupon, plaintiff entered into occupancy of said 158.82
11 acres and complied with all the requirements and conditions of said contract to be by it kept and performed.

Plaintiff is, and ever since the 31st day of January, 1910, has been, the owner in possession of said 480 acres, to wit, the west half (W. ½) and the west half (W. ½) of the east half (E. ½) of section 36, T. 30 S., R. 23 E., M. D. B. & M., in Kern County, California, which plaintiff as aforesaid purchased for the sum of $11,000 from grantee of the State of California, holding certificate of purchase for said land duly and regularly issued on January 5, 1909, by the State of California. And plaintiff is, and ever since the 25th day of May, 1919, has been, in possession of said 158.82 acres in the east half (E. ½) of the east half (E. ½) of said section 36 under and pursuant to said contract of development entered into on May 25, 1919, with the successors in interest of grantees of the State of California.

On August 28, 1918, plaintiff began the exploration of said 480 acres and commenced the drilling of a well thereon for oil. Oil was discovered in said well on January 5, 1919, at a depth of 2,532 feet, and this was the first discovery of mineral on said section 36. Thereafter and prior to the year 1921, the date of certain proceedings hereinafter referred to, plaintiff drilled and completed on said 480 acres of section 36 and on said 158.82 acres, under said contract

of May 25th, 1919, numerous wells at an expenditure of many hundreds of thousands of dollars, producing therefrom oil and gas in large quantities.

Plaintiff and its said agent purchased said 480 acres and acquired legal title thereto, as aforesaid, without notice or knowledge that the United States would ever pretend or claim contrary to the find-
12 ing and record thereof of its own Land Department that said land was known to be mineral land at the time of the acceptance or filing of said survey. Plaintiff developed said 480 acres of said land and entered upon the performance of said contract of May 25th, 1919, and in that behalf expended great sums of money on said land, in reliance upon the act of Congress hereinbefore referred to granting said land to the State of California and in reliance upon the rules and regulations and published decisions of the Department of the Interior, and in reliance upon the published decisions of the courts of the United States having jurisdiction over such matters and in reliance upon the status of said land as non-mineral land at the date of the acceptance and of the filing of the plat of survey thereof, and in reliance upon the fact that the mineral character of said land at said dates was unknown, and in reliance upon the certificate of the register and receiver of the United States Land Office hereinbefore referred to.

IX. By letter dated January 14th, 1914, the general land office at Visalia was instructed by the Commissioner of the General Land Office to institute adverse proceedings in respect to said section 36 upon charges (1) that the land was mineral in character, containing valuable deposits of petroleum, and (2) that the land was of known mineral character at and prior to the survey thereof on December 20th, 1901.

No copies of said charges were served upon nor was any notice thereof given to any of the parties interested in said section 36.

No further action was taken on said charges in the year 1914, or thereafter except as herein set forth.

13 By letter dated October 12th, 1917, the Commissioner of the General Land Office asked for a list of contests pending in respect to public lands in California and involving the question of the petroleum character of such lands.

By letter dated November 26th, 1917, the land office at Visalia, California, replied to the letter of the Commissioner of the General Land Office of October 12th, 1917, referring to the pendency of said charges as to the mineral character of said section 36.

X. No further proceedings were had on said charges directed to be filed on January 14, 1914, until March, 1921, when by letter dated March 2nd, 1921, the Commissioner of the General Land Office directed the chief of field division in California to advise the register and receiver at Visalia, California, of the names and addresses of all parties interested in said section 36 and to proceed with proceedings for the determination of the mineral character of said section. A copy of said letter is hereto attached and marked "Exhibit K."

In the month of May, 1921, when the General Land Office was seeking to revive said proceedings sought to be filed in the year 1914, application was made to the Secretary of the Interior by

plaintiff and other persons interested in said section to exercise his jurisdiction to determine that section 36 was a school section, title to which was vested in the State, and had been so vested since the approval of the survey, and for the dismissal of said charges.

After the submission of briefs setting forth and discussing the matters involved and hereinbefore referred to, the Secretary
14 of the Interior gave notice on May 28th, 1921, of a hearing to be held on June 8th, 1921, before himself, on the motion to dismiss said charges. Due notice of said hearing was given to the various persons and departments of the United States Government concerned, to wit, to the Department of Justice, the Department of the Navy, and the General Land Office and to all parties interested in said section 36, and said hearing was held on said June 8th, 1921.

There were present at the hearing of said proceedings, the Secretary of the Interior, the honorable E. C. Finney, Assistant Secretary of the Interior, honorable E. H. Hammel, representing the General Land Office, Mr. E. D. Caldwell, Special Assistant Attorney General for the Department of Justice, representing the U. S. Navy, Commander H. A. Stuart, appearing on behalf of the Bureau of Steam Engineering, United States Navy, Mr. Harry L. Underwood, Solicitor of the Department of Justice, all representing the Government of the United States and its various departments, and this plaintiff and the owners of portions of section 36, represented by their counsel. At said hearing the facts in the foregoing paragraphs numbered III, IV, V, VII, and VIII set forth, as well as other matters and things, were submitted to said Secretary of the Interior, and were admitted by the parties present to be true and correct.

Thereupon the Secretary of the Interior, at the conclusion of said hearing, on June 8, 1921, ordered a dismissal of the charges and contest filed. Thereupon and on the 9th day of June, 1921, the First Assistant Secretary of the Department of the Interior, directed the Commissioner of the General Land Office to order a dismissal of said contest. A copy of said order is hereto annexed, marked "Exhibit L," and is hereby referred to and specifically made a part hereof.

Thereafter, and on the 9th day of June, 1921, the Com-
15 missioner of the General Land Office directed the register and receiver at Visalia, California, to close the case upon their records and to notify all the parties in interest of the dismissal thereof. A copy of said letter is hereto attached, marked "Exhibit M," and is hereby referred to and specifically made a part hereof.

No appeal or petition for rehearing was ever filed in said proceeding, and the time therefor, under the law and rules of the department, expired long prior to the proceedings initiated June 12th, 1925, hereinafter referred to. Plaintiff is informed and believes and therefore avers that said decision of the Secretary of the Interior, on June 8, 1921, is and was a final adjudication and judgment respecting a matter within his exclusive jurisdiction.

Prior to the proceedings hereinbefore referred to before the Secretary of the Interior on June 8, 1921, and in the month of March, 1921, the Secretary of the Interior recommended to the Attorney General of the United States that appropriate action be taken

through the courts, looking to the protection of the interests of the Government of the United States, pending final action on the charges and proceedings filed as hereinbefore cited in 1914, and revived in the year 1921. Thereupon in the month of May, 1921, plaintiff agreed with the Department of Justice to suspend further development of the portion of said section 36 in its possession pending the determination of the proceedings on said charges. Thereafter and on June 28, 1921, the Department of the Interior, by letter dated June 28, 1921, notified the Attorney General of the United States of the hearing before the secretary of the Interior on
16 June 8, 1921, and of the appearance thereat of the transferees of the State of California, and of the representatives of the Department of Justice, and of the Navy Department, and that after consideration of the law and facts involved, the Secretary had directed that the proceedings be dismissed, which order had been carried into effect, and that in view thereof, the case had been closed. A copy of said letter, dated June 28, 1921, is hereto attached, marked "Exhibit N," and hereby referred to and made a part hereof.

XI. By letter dated May 8, 1925, the defendant, the honorable Secretary of the Interior purported to reverse, vacate, and set aside the action of the former Secretary of the Interior of June 9th, 1921, and pursuant to which the proceedings were dismissed and the case closed, and by said letter dated May 8th, 1925, said defendant, the Secretary of the Interior, directed the register and receiver of the Visalia land office to notify the State of California, the plaintiff, and others claiming title directly or indirectly in or to any portion of said section 36, and to determine upon a date for a hearing. A copy of said letter is hereto attached and marked "Exhibit O" and is hereby referred to and made a part hereof, this complainant, however, not admitting the truth or pertinency of the facts therein recited as the grounds for the proceedings therein directed.

Copy of said letter was forwarded to plaintiff by the register of the Visalia land office on June 12th, 1925, and on July 28th, 1925, this plaintiff and other parties in interest were notified of the charges hereinbefore referred to and were notified to appear and answer said charges and to apply for a hearing thereon; otherwise said entry or claim would be reported to the Commissioner of the
17 General Land Office for rejection or cancellation. A copy of said notice is hereto attached and marked "Exhibit P" and is hereby referred to and made a part hereof.

By letter dated August 4th, 1925, plaintiff filed with the defendant, Secretary of the Interior, a plea in bar to the jurisdiction of the Secretary of the Interior to order said hearing and prayed that the order for a hearing on the question of the mineral character of said section be suspended until determination of said plea in bar, as appears from said letter of August 4, 1925. Said plea was based upon the matters and things herein set forth, and upon other and further grounds.

Thereafter and by letter dated August 17, 1925, the motion of the plaintiff was denied and the defendant, Secretary of the Interior, ordered that the hearing ordered by decision of May 8, 1925, should proceed. A copy of said letter is attached hereto and marked "Exhibit Q" and is hereby referred to and made a part hereof.

XII. Plaintiff is informed and believes the fact to be and therefore avers that by reason of the matters hereinbefore set forth, the proceedings and hearings ordered by the Secretary of the Interior are not within the power of the Secretary of the Interior and constitute a cloud upon the title of this plaintiff to the portions of said section 36 owned and occupied by it as aforesaid and will cause this plaintiff irreparable damage, for which it has no adequate remedy at law, and will tend to harass this plaintiff and to expose it to long and vexatious litigation of matters heretofore adjudicated and finally determined by the proper officials of the Govern-
18 ment of the United States in the manner provided by law, for all of which this plaintiff has no adequate remedy at law.

Wherefore plaintiff prays:

1. That a writ of subpœna be issued out of this court addressed to Hubert Work, Secretary of the Interior, requiring him to answer the foregoing bill of complaint.

2. That this honorable court do issue an injunction pendente lite enjoining the defendant, said Secretary of the Interior, pending the determination of this cause, from continuing the proceedings directed by said Secretary of the Interior as hereinbefore set forth regarding the title to the west half and the west half of the east half and lots 5, 6, 7, 8, 11, and 12 of section 36, township 30 south, range 23 east, M. D. B. & M., Kern County, California, and that a rule to show cause why an injunction pendente lite, as aforesaid, should not be issued herein be granted;

3. That upon the final hearing of this cause, said injunction pendente lite be made permanent.

4. That plaintiff may have such other and further relief as to the court may seem meet and proper in the premises.

STANDARD OIL COMPANY, A CORPORATION,
By OSCAR SUTRO,
and McKENNEY & FLANNERY,
Its Attorneys.

PILLSBURY, MADISON & SUTRO,
Of Counsel.

19 DISTRICT OF COLUMBIA, *ss:*

Oscar Sutro, being first duly sworn, deposes and says that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge as to all matters therein set forth except as to such matters as are therein stated on information and belief, and that as to those matters he believes it to be true; that he is and has been for many years last past the attorney for the plaintiff named in the foregoing complaint, and has personal knowledge of and is familiar with the matters therein recited; that he makes this affidavit on behalf of the said plaintiff for the reason that none of the officers of said plaintiff reside in the District of Columbia nor is any one of said officers present in said District. All of said officers reside in and are now in the State of California.

OSCAR SUTRO.

Subscribed and sworn to before me this 8th day of October, 1925.

[NOTARIAL SEAL.] CAESAR A. CARBALLO,
Notary Public in and for the District of Columbia.

20 EXHIBIT A

W. E. V.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 28, 1900.

Address only the Commissioner of the General Land Office.

[Telegram]

REGISTER and RECEIVER,
Visalia, California.

Suspend from disposition until further orders townships thirteen, ranges ten and eleven; fourteen, ranges eleven and twelve; fifteen, ranges eleven and twelve; sixteen, ranges twelve, thirteen, and fourteen; seventeen, ranges thirteen and fourteen; eighteen, ranges thirteen, fourteen, and fifteen; nineteen, ranges fourteen, fifteen, and sixteen; twenty, ranges fourteen and fifteen; twenty-one, ranges fifteen and sixteen; twenty-two, ranges fifteen, sixteen, seventeen, and eighteen; twenty-three, ranges sixteen, seventeen, and eighteen; twenty-four, ranges seventeen, eighteen, and nineteen; twenty-five and twenty-six, range nineteen; twenty-eight and twenty-nine, range twenty; thirty, range twenty-three; twenty-five and twenty-six, ranges twenty-six, twenty-seven, and twenty-eight; twenty-seven, ranges twenty-seven, twenty-eight, and twenty-nine south and east.

BINGER HERMANN, *Commissioner.*

21 EXHIBIT B

37499–1b. 493. 492.
N. H. G. P. W. D. H.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 19, 1900.

Address only the Commissioner of the General Land Office.

REGISTER and RECEIVER,
Visalia, California.

SIRS: Suspensions from disposition of certain townships by telegrams of February twenty-sixth and twenty-eighth, last, will be continued for a reasonable time pending inquiry as to the true character of the lands which is now in progress.

These suspensions do not include mineral lands.

Very respectfully,

BINGER HERMANN, *Commissioner.*

22 EXHIBIT C

N. E. C. F. W. O. C. H. G. P.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE.
Washington, D. C., February 11, 1904.

Address only the Commissioner of the General Land Office.

(1227)

REGISTER and RECEIVER,
Visalia, California.

SIRS: By telegrams "P" of February 21 and 28, 1900, townships 30 S., range 23 E., and 32 S., 25 E., M. D. M., were suspended from disposition under the agricultural land laws upon allegations that same contained deposits of mineral (oil).

I am now in receipt of a report from a special agent of this office who has examined the SW. ¼ sec. 1; sec. 15; NE. ¼ and S. ½ sec. 17; NE. ¼ and S. ½ sec. 19; sections 21, 23, 25, 27, 33, 35, Tp. 30 S., R. 23 E.; SE. ¼ sec. 23; SW. ¼ sec. 25; and the SW. ¼ sec. 27, Tp. 32 S., R. 25 E., M. D. M., and who states that a careful examination thereof failed to disclose any oil seepages, oil springs, surface, or other indications of oil or minerals of any kind that would tend to warrant the lands being classed as mineral. He recommends that same be relieved from suspension. The statements made in the special agent's report are not controverted by the records of this office and it would appear that during the period of nearly four years, which has elapsed since said suspension, any persons interested in the mineral development of the lands have had ample opportunity to explore and develop the same.

23 In view of these facts, it appearing that no oil or mineral of any kind has been discovered upon the lands in question, it is believed that no good reason exists for the further suspension thereof. Accordingly the lands hereinabove described are hereby relieved from suspension.

Make the proper notations upon your records.

Very respectfully,

J. H. FIMPLE,
Assistant Commissioner. (1228)

24 EXHIBIT D

N. E. C. F. H. G. P.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 20, 1904.

Address only the Commissioner of the General Land Office.

REGISTER and RECEIVER,
Visalia, California.

SIRS: Telegram "p" of February 28, 1900, suspended lands in T. 30 S., R. 23 E., M. D. M., from disposition under the agricultural land laws, it being alleged that same contain deposits of oil. During the month of January, 1904, a special agent of this office examined section 29 of said township and reports that he found no oil seep-

ages, oil springs, surface, or other indications of oil or minerals of any kind upon said section. He recommends that same be relieved from suspension. No objection thereto appearing upon the records of this office, said recommendation is concurred in and sec. 29, T. 30 S., R. 23 E., M. D. M., is hereby relieved from suspension.

Very respectfully,

W. A. RICHARDS, *Commissioner.*

25

EXHIBIT E

Department of the Interior
General Land Office
623 Butler Bldg., San Francisco, Cal.

LOS ANGELES, CAL., *March 22, 1904.*

Hon. COMMISSIONER,
General Land Office,
Washington, D. C. (1231)

SIR: Referring to your letter ("N" E. G. F.) of December 10, 1903, directing me to make report based upon the examination heretofore made, my knowledge of the lands remaining to be examined, and familiarity with the country generally, as to whether, in my opinion, there is any necessity for the continuance of the suspension of the lands in the Visalia, San Francisco, and Los Angeles land districts suspended by your office in 1900, and not reported upon, I now have the honor to submit report upon the following-described lands:

Township	Range	
19 S.	15 E., M. D. M.	Secs. 25 to 36, incl.
27 S.	27 E., "	Secs. 11, 12, 13, 14, 23, 24, 25,
28 S.	27 E., "	26, 35, and 36.
28 S.	28 E., "	Secs. 2 to 1, incl.
29 S.	28 E. "	
29 S.	20 E., "	
29 S.	21 E., "	
29 S.	22 E., "	
30 S.	21 E., "	
30 S.	22 E., "	
30 S.	23 E., "	
31 S.	22 E., "	
31 S.	23 E., "	
31 S.	24 E., "	
31 S.	25 E., "	
32 S.	20 E., "	
32 S.	22 E., "	
32 S.	23 E., "	
32 S.	24 E., "	
32 S.	25 E., "	
26 11 N.	23 W., S. B. M.	(1232)
11 N.	24 W., "	
11 N.	28 W., "	
12 N.	23 W., "	
12 N.	28 W., "	

T. 19 S., R. 15 E., is in what is known as the Coalinga oil field and is said by a number of mining men to be one of the best oil fields in the State. So far as I have been able to ascertain, there are about 90 producing wells in this township, among them being the famous well known as the Blue Goose, which has been in active operation for several years and has produced for its owners, I am informed, more than a million of dollars. Many wells are now being bored for oil in this township, nearly all of which, I believe, will be large producers. In my opinion it will be well to have all the lands in this township remain under suspension for the present.

T. 27 S., R. 27 E., sections 25 and 36, inclusive; I know of no wells in these sections, and in my opinion there is no necessity for the continuance of the suspension of said lands.

T. 28 S., R. 27 E., sections 11, 12, 13, 14, 23, 24, 25, 26, 35, 36: So far as I have been able to ascertain, there are 7 wells in sec. 24, 5 in sec. 25, and 2 in sec. 36, in all of which, it is said, oil has been found. Said sections are in what is known as the Kern River oil field. In my opinion sections 11, 12, 13, 14, 23, 26, and 35 should be relieved from suspension, but I believe it will be well to have sections 24, 25, and 36 remain under suspension. (1233)

T. 28 S., R. 28 E., is in what is known as the Kern River oil field. There are a great many producing oil wells in the S. ½ of this township; so far as I have been able to ascertain, 7 wells have been bored in the S. ½ of sec. 19, 1 in the NW. ¼ and 4 in the S. ½ of sec. 20, 1 in the SW. ¼ sec. 21, about 36 in sec. 28, and a great many in sections 29, 30, 31, 32, 33, and 34, in all of which it is said oil has been obtained. Many of these wells are large producers. It is said by mining men who know the field well that the northern part of this township is not now considered to be of value for its mineral. In my opinion there is no necessity for the continuance of the lands in sections 1 to 18, inclusive, but think that sections 19 to 36, inclusive, should remain under the order of suspension.

27

T. 29 S., R. 28 E., sections 2 to 11, inclusive: These sections are also in the Kern River oil field. There are, so far as I can learn, 5 oil wells in sec. 2, about 92 in sec. 3, about 176 in sec. 4, about 80 in sec. 5, 13 in sec. 8, 11 in the NW. ¼ sec. 9, 1 in the SW. ¼ NW. ¼ sec. 10, and 2 in the NW. ¼ NW. ¼ sec. 11. In my opinion it will be well to have these sections remain under your order of suspension.

T. 29 S., R. 20 E.: So far as I am able to ascertain, 5 wells were bored in sec. 36 and 1 in the NE. ¼ of sec. 13, in which only a small quantity of oil was obtained. This does not appear to be a productive territory, and in my opinion there is no necessity for the continuance of the suspension of the lands in this township. (1234)

T. 29 S., R. 21 E.: From all I can ascertain 4 wells were bored in the N. ½ of sec. 19 and one in the S. ½ of sec. 7, in which a small quantity of oil was obtained; one well was bored in sec. 32, and 2 wells were bored in sec. 31, all of which, I am informed, have been abandoned. In my opinion there is no necessity for the continuance of the suspension of the lands in this township.

28

T. 29 S., R. 22 E.: So far as I have been able to ascertain no wells have been bored for oil, and in my opinion the lands in this township should be relieved from further suspension.

T. 30 S., R. 21 E., is in what is known as the McKittrick oil field. About 40 wells have been bored in this township, in all of which, I am informed, oil has been obtained. Said wells are in S. ½ of sec. 11. Sections 12 and 13, and lot 73, sec. 14, patented. Several other wells have been bored for oil and abandoned. The greater portion of the lands in this township are chiefly valuable for agriculture (grazing) purposes, and it is my opinion that all the lands therein, except the S. ½ of sec. 11, sections 12 and 13, should be relieved from further suspension.

T. 30 S., R. 22 E., is in the McKittrick oil field. Many wells have been bored for oil in this township, some of which are fairly good producers. So far as I have been able to ascertain there is 1 oil well in sec. 6 and 1 oil well in sec. 7; 6 wells have been bored in sec. 18, all of which are said to contain oil; 14 wells have been bored in section 19, in 11 of which oil was found, and the others (1,235) have been abandoned; 24 wells bored in sec. 20, 21 of which are said to contain oil, and the others have been abandoned; 1 oil well in sec. 27; 8 wells bored in sec. 28, all of which have been abandoned; 17 wells bored in the NE. ¼ sec. 29, all of which are said to contain oil; 3 wells bored in the NW. ¼ sec. 29 and abandoned; 1 well bored in the SW. ¼ sec. 29 and abandoned; 1 well bored in the NE. ¼ sec. 30 and abandoned; 5 wells bored in sec. 34, all of which are said to contain oil. The productive territory appears to be very well known and outlined, and in my opinion there is no necessity for the continuance of the suspension of the lands in this township, except sections 6, 7, 18, 19, 20, 27, E. ½ sec. 29, and 34.

T. 30 S., R. 23 E.: No wells have been bored for oil, and in my opinion all the lands in this township should be relieved from further suspension.

T. 31 S., R. 22 & 23 E.: Wells have been bored, but I know of no successful result, and in my opinion all the lands in these townships should be relieved from suspension.

T. 31 S., R. 24 E., is not considered to be in a probable oil-producing territory, and, my opinion all the lands therein should be relieved from suspension.

T. 31 S., R. 25 E., is not considered to be in a probable oil-producing territory. I know of no oil wells in this township, and in my opinion all the lands therein should be relieved from further suspension.

T. 32 S., R. 20 E.: I know of no oil wells in this township, and in my opinion there is no necessity for the continuance of the suspension of the lands therein. (1236)

T. 32 S., R. 22 E.: There are no oil wells in this township, so far as I have been able to ascertain, and it is my opinion that all the lands therein should be relieved from suspension.

T. 32 S., R. 23 E., is in what is known as the South Midway oil field. In this township there are, so far as I have been able to ascertain, about 38 oil wells, 2 of which are in sec. 5, 1 in sec. 6, 6 in sec. 8, 2 in sec. 9, 1 in sec. 15, 2 in sec. 17, 3 in sec. 21, 4 in sec. 22, 4 in sec. 23, 5 in sec. 25, 7 in sec. 26, and 1 in sec. 27; other wells are being bored in a few of these sections. In my opinion it will be well to have the above-mentioned sections remain under sus-

pension, and relieve from further suspension sections 1, 2, 3, 4, 7, 10, 11, 12, 13, 14, 16, 18, 19, 20, 24, and 28 to 36, inclusive.

T. 32 S., R. 24 E.: In my opinion there is no necessity for the continuance of the suspension of the lands in this township, except sections 30, 31, and 32, which are thought to be in the oil belt. From all I can learn 2 wells are being bored for oil in sec. 30, 3 wells have been bored in sec. 31, and 1 in sec. 32, in which, it is said, oil has been obtained.

T. 32 S., R. 25 E.: I know of no oil wells in this township, and in my opinion all the lands therein should be relieved from further suspension.

T. 11 N., R. 23 W.: So far as I have been able to ascertain, 19 wells have been bored in this township, all of which are said to contain oil; said wells are in sections 7, 17, 18, 19, and 20. In my opinion there is no necessity for (1237) the continuance of the suspension of the lands in this township, except sections 7, 17, 18, 19, and 20.

T. 11 N., R. 24 W., is in what is known as the Sunset oil field. About 70 wells have been bored in this township, in which, it is said, oil has been obtained; said wells are in sections 1, 2, 3, 11, 12, 13, and 16; many other wells are being bored in said sections. Wells have been bored in sections 14, 23, and 22, all of which have been abandoned. In my opinion there is no necessity for the continu-
31 ance of the suspension of the lands in this township, except sections 1, 2, 3, 11, 12, 13, 16.

T. 11 N., R. 28 W.: I know of no oil wells in this township, and in my opinion all the lands therein should be relieved from suspension.

T. 12 N., R. 23 W.: I know of no producing wells in this township, and it is my opinion that all the lands embraced therein should be relieved from further suspension.

T. 12 N., R. 28 W.: I know of no producing wells in this township, and it is my opinion that all the lands embraced therein should be relieved from further suspension.

Very respectfully,

(Sg.) E. C. RYAN,
Special Agent, G. L. O.

32 EXHIBIT F

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
E. C. F. *Washington, D. C., April 5, 1904.*

Address only the Commissioner of the General Land Office.

REGISTER and RECEIVER,
Visalia, California.

SIR: By letter of December 10, 1903, a special agent of this office was directed to submit report based upon examinations heretofore made by him, his general knowledge of the lands and familiarity with the country generally, as to whether, in his opinion, there is any necessity for the continuance of the suspension of lands in your district suspended by this office in February, 1900, on account of their alleged oil character.

I am now in receipt of the agent's report to the effect that certain of the lands so suspended are being developed for their deposits

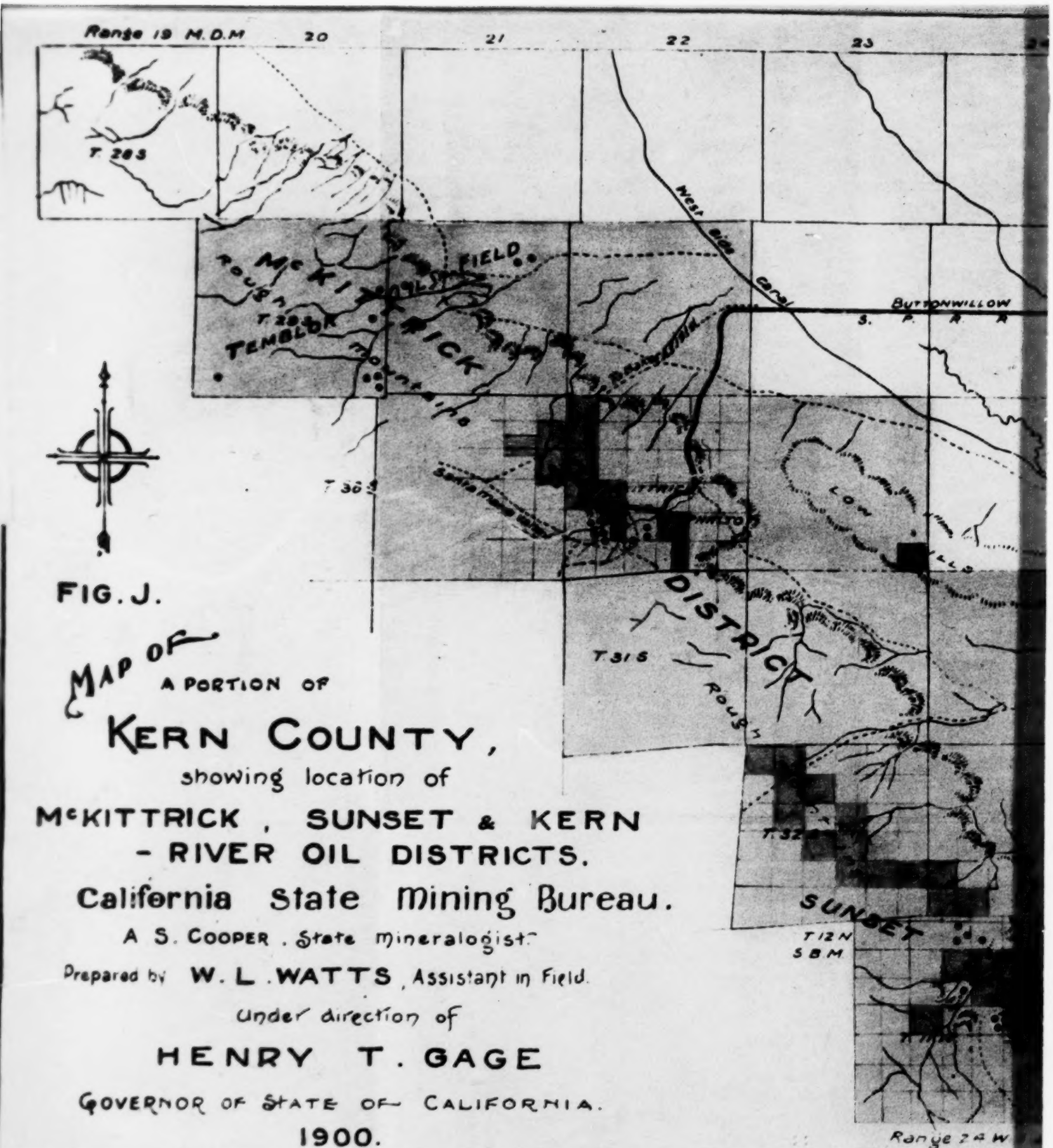


FIG. J.

MAP OF A PORTION OF

KERN COUNTY,

showing location of

McKITTRICK, SUNSET & KERN - RIVER OIL DISTRICTS.

California State Mining Bureau.

A. S. COOPER, State mineralogist.

Prepared by W. L. WATTS, Assistant in Field.

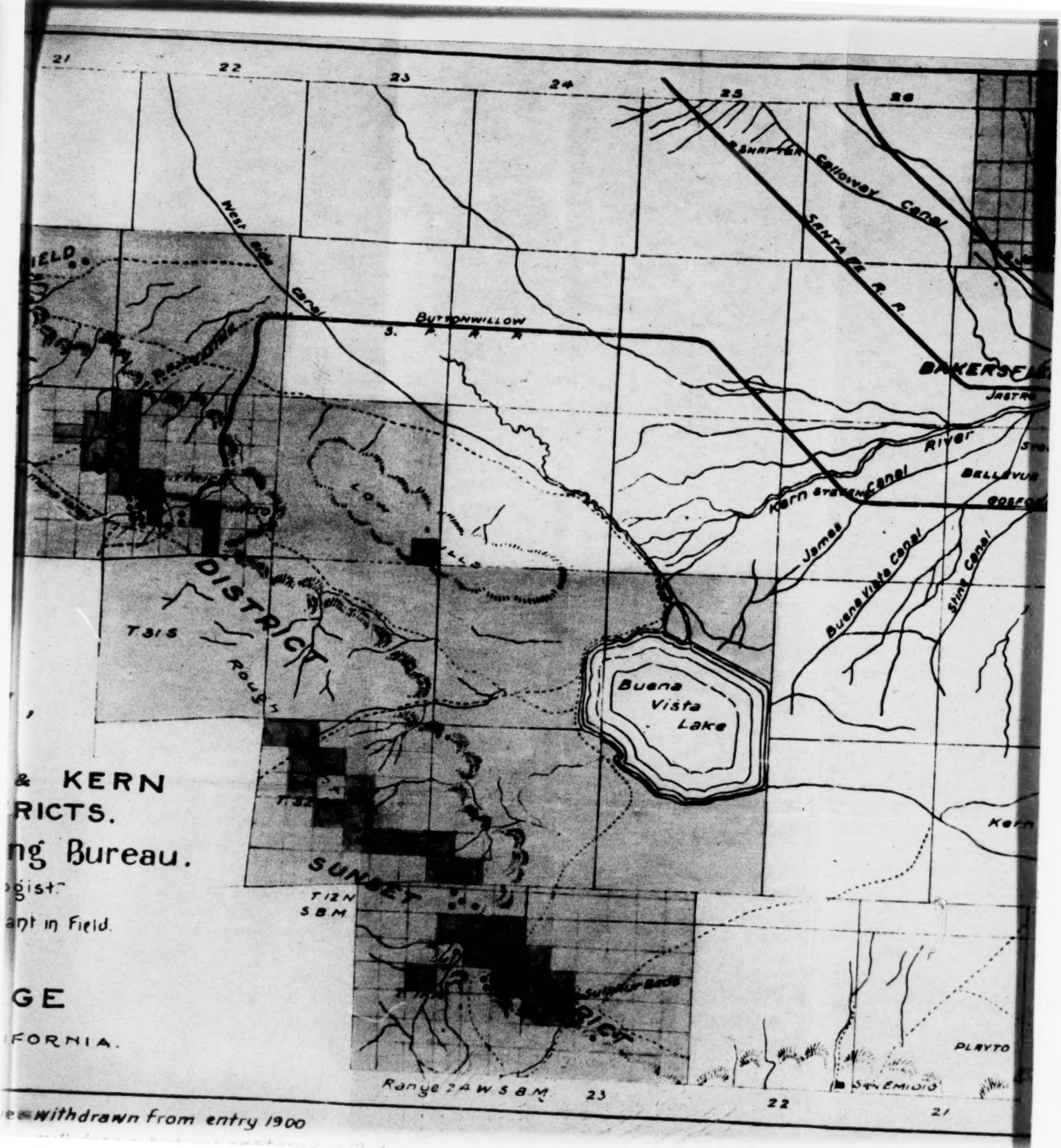
under direction of

HENRY T. GAGE

GOVERNOR OF STATE OF CALIFORNIA.

1900.

NOTE: Townships and Sections tinted blue ■ Withdrawn from entry 1900 and restored in 1904; those tinted red ■ Withdrawn but not restored in 1904. See Copy of Report of E.C. Ryan, Spec. Agent G.L.O. dated May 22. 1904


21
22
23
24
25
26
Shafter
Calloway Canal
Santa Fe R. R.
West Side Canal
Buttonwillow
S. P. R. R.
Bakersfield
Jastro
River
Bellevue
Kern Island Canal
James
Buena Vista Canal
Shina Canal
Low
Lake
DISTRICT
T. 31 S.
Rouse
Buena Vista Lake
& KERN
RICTS.
ng Bureau.
gist.
ant in Field.
GE
FORNIA.
T. 32
SUNSET
T. 12 N.
S. B. M.
Sulphur Beds
RICT
Kern
Playto
San Emidio
Range 24 W. S. B. M.
23
22
21
withdrawn from entry 1900

22 23 24 25 26 27 28 29 30 Angr

Calloway Canal

SANTA FE R R

West Side Canal

BUTTONWILLOW

S. P. R. R.

BAKERSFIELD

JASTRO

KERN

Transmission Line Power Dev to Mountainous

mountains

STOCKDALE

RIVER

BELLEVUE

OSFORD

Kern Stor. Canal

James

Buena Vista Canal

Shirk Canal

WADE

SAN P R R

PAMPA

East Side Canal

GREENFIELDS

Buena Vista Lake

Kern Lake

SUNSET

T12N S.B.M.

PLAYTO

SAN EMIDIO

Range 24 W S.B.M.

23 22 21 20 19 West

TEJON OIL DISTRICT

Rancho El Tejon

Rough mountains

Suisun

From entry 1900

of mineral and that numerous oil wells have been sunk which have proved to be good producers of mineral. Other townships and portions of townships have not been developed at all, for wells that have been sunk have proved to be barren. The lands upon which he states active mineral development is in progress will be allowed to continue suspended, but as to the following tracts where no mineral has been discovered it is believed that no good reason exists for further suspension.

Accordingly the lands hereinafter described are hereby relieved from suspension. (1240)

33 Sections 25 and 36, inclusive, T. 27 S., R. 27 E., M. D. M.
Sections 11, 12, 13, 14, 23, 26, and 35, T. 28 S., R. 27 E., M. D. M.
Sections 1 to 18, inclusive, T. 28 S., R. 28 E., M. D. M.
All of T. 29 S., R. 20 E., M. D. M.
All of T. 29 S., R. 21 E., M. D. M.
All of T. 29 S., R. 22 E., M. D. M.
All of T. 30 S., R. 21 E., M. D. M., except S. ½ sec. 11, secs. 12, 13.
All of T. 30 S., R. 22 E., M. D. M., except sections 6, 7, 18, 19, 20, 27, E. ½ 29, and 34.
All of T. 30 S., R. 23 E., M. D. M.
All of T. 31 S., R. 22 E., M. D. M.
All of T. 31 S., R. 23 E., M. D. M.
All of T. 31 S., R. 24 E., M. D. M.
All of T. 31 S., R. 25 E., M. D. M.
Sections 1, 2, 3, 4, 7, 10, 11, 12, 13, 14, 16, 18, 19, 20, 24, 28, 29, 30, 31, 32, 33, 34, 35, and 36, T. 32 S., R. 23 E., M. D. M.
All of T. 32 S., R. 24 E., M. D. M., except sections 30, 31, and 32.
All of T. 32 S., R. 25 E., M. D. M.

Make the proper notations upon the records of your office.

Very respectfully,

J. T. MACEY, *Acting Commissioner.*

WPW. 2

[Here follows diagram marked page 34.]

35 EXHIBIT H

UNITED STATES LAND OFFICE,
Visalia, Cal., January 24, 1908.

This is to certify that I have examined the files, plats, and records of this office in relation to all of sec. 36, Tp. 30 S., R. 23 E., Mount Diablo meridian, and find that there is not any homestead preemption, or other valid claim to any portion of said land on file or record in this office adverse to that of the State of California, and that the plat thereof has been filed in this office more than ninety days, viz, since May 16, 1903, and was approved by the United States Surveyor General on the 1st day of August, 1902.

GEO. W. STEWART, *Register.*

Will register please certify and return, and oblige,

W. S. KINGSBURY,
State Surveyor General.
By A. W. SANBORN, *Deputy.*

36 EXHIBIT I

APPLICATION TO PURCHASE STATE LANDS

Location No. 5114. Visalia land district.

STATE OF CALIFORNIA,
County of Kern:

To the STATE SURVEYOR GENERAL,
Sacramento.

I, George Hay, of Kern County, do hereby apply to purchase the land hereinafter described, and in support of my application I do solemnly swear that I am by nativity a citizen of the United States, a resident of this State, of lawful age. That I desire to purchase from the State of California, under provisions of title eight of the Political Code, the following-described land in Kern County, to wit: West half and west half of east half of section thirty-six, in township thirty south, range twenty-three east, M. D. B. & M. (the said west half of east of said section being also known as lots 3, 4, 9, and 10 according to the U. S. survey of 1903), containing four hundred and eighty acres. That there is no occupation of said land adverse to any I have.[a] That I desire to purchase the same for my own use and benefit and for the use or benefit of no other person or persons whomsoever, and that I have made no contract or agreement to sell the same.[b] That said land is not suitable for cultivation; that I have not entered any portion of any lands mentioned in section three thousand four hundred and ninety-four of the Political Code (to wit, the unsold portion of the five hundred thousand acres granted to the State for school purposes, the sixteenth and thirty-sixth sections, and the lands selected in lieu thereof), which, together with that now sought to be purchased exceeds[c] six hundred forty acres, and that said land is not timbered land.

Subscribed and sworn to before me this 24th day of August, 1908.
OTIS BISHOP.

GEORGE HAY,
Post Office Address, Bakersfield, Kern County, California.

Read your application carefully.

---

[a] If there is an adverse occupation, then the affidavit must state that the adverse occupant (giving his name) has been in such occupation more than sixty days since the plat was filed in the United States Land Office.

[b] If the land is suitable for cultivation, then here add "That I am an actual settler thereon."

[c] If the land is suitable for cultivation, then the area to be here inserted must be three hundred and twenty acres, otherwise six hundred and forty acres.

NOTE.—If the applicant is a female, the affidavit must state "that she is entitled to purchase and hold real estate in her own name." (Section 3496, Political Code.)

Lands belonging to the State which are suitable for cultivation shall be granted only to actual settlers, and in quantities not exceeding three hundred and twenty acres to each settler, under such conditions as shall be prescribed by law. (Constitution of California, Article XVII, section 3.)

Any false statement contained in the affidavit provided for in section three thousand four hundred and ninety-five defeats the right of the applicant to purchase the land or to receive any evidence of title thereto, and if willfully false subjects him also to punishment for perjury. Timber lands belonging to this State shall be sold for cash only, and the surveyor general and register of the State land office must make and enforce all necessary rules and regulations to prevent the sale of or issuance of any evidence of title to any timber land of the State except on payment in cash of the full price fixed therefor by law. (Section 3500, Political Code.)

All applications, under whatsoever act, filed in the office of the surveyor general must be retained ninety days before approval, and must be approved) when there is no conflict) by the surveyor general at the expiration of six months, subject, however, to the provisions of sections thirty-four hundred and six and thirty-four hundred and seven of this code, and all unapproved applications which have been on file over six months, wherein the approval has not been demanded, or wherein the contest has not been referred to court, or a demand made for an order of reference, as provided in section thirty-four hundred and fourteen of the Political Code, shall be null and void.

This act shall take effect on the first day of August eighteen hundred and eighty-five, and the surveyor general shall give notice to each applicant to be affected thereby by sending to said applicant or his attorney, a copy of this act. (Section 3498, Political Code.)

37

EXHIBIT J

APPLICATION TO PURCHASE STATE LANDS

Location No. 5113. Visalia land district.

STATE OF CALIFORNIA,
County of Kern:

To the STATE SURVEYOR GENERAL,
Sacramento.

I, Mason W. Buffington, of Kern County, do hereby apply to purchase the land hereinafter described, and in support of my application I do solemnly swear that I am by nativity a citizen of the United States, a resident of this State, of lawful age. That I desire to purchase from the State of California, under provisions of title eight of the Political Code, the following-described land in Kern County, to wit: Lots 1, 2, 5, 6, 7, 8, 11, and 12 in section thirty-six, township thirty south, range twenty-three east, M. D. B. & M., containing two hundred twelve and 39/100 acres. That there is no occupation of said land adverse to any that I have.[a] That I desire to purchase the same for my own use and benefit, and for the use or benefit of no other person or persons whomsoever, and that I have made no contract or agreement to sell the same.[b] That said land is not suitable for cultivation; that I have not entered any portion of any lands mentioned in section three thousand four hundred and ninety-four of the Political Code (to wit, the unsold portion of the five hundred thousand acres granted to the State for school purposes, the sixteenth and thirty-sixth sections, and the lands selected in lieu thereof), which, together with that now sought to be purchased, exceeds[c] six hundred and forty acres, and that said land is not timbered land.

Subscribed and sworn to before me this 24th day of August, 1908.

OTIS BISHOP.

MASON W. BUFFINGTON,
Post Office Address, Bakersfield, Kern County, California.

Read your application carefully.
Z.

38

EXHIBIT K

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 2, 1921.

J. H. FAVORITE,
Chief of Field Division,
San Francisco, California.

MY DEAR FAVORITE: Referring to your letter of February 2, 1921, advising status of proceedings directed by this office on January 14, 1914, involving sections 16 and 36, T. 30 S., R. 23 E., M. D. B. & M.: I enclose herewith copy of my letter of even date to the register and receiver at Visalia, California, amending the charges. You

a, b, c [See footnotes in Exhibit I.]

will, as suggested in the letter to the register and receiver, take prompt action to advise the register and receiver of the names and addresses of all parties to be served with notice of the proceedings.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

39 EXHIBIT L

1124774

DEPARTMENT OF THE INTERIOR,
Washington, June 9, 1921.
Received Jun. 9, 1921. G. L. O.

Address only the Secretary of the Interior.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

DEAR MR. COMMISSIONER: In 1914 proceedings were directed by your office against the State of California and its transferees as to secs. 16 and 36, T. 30 S., R. 23 E., M. D. M. No further action appears to have been taken in the matter until the latter part of 1920, when, it having been called to the attention of the Commissioner of the General Land Office, direction was given that the proceedings be revived and appropriate action taken.

The transferees of the State of California, representatives of the Department of Justice, and of the Navy Department appeared before Secretary Fall on June 8, 1921, and presented the matter orally, whereupon, after consideration of the law and facts involved, the Secretary verbally directed that the proceedings be dismissed. You are therefore authorized and directed to dismiss the proceedings against the State of California and its transferees in re said secs. 16 and 36. Notify all parties in interest of the dismissal and close the case upon your records.

By direction of the Secretary.

Respectfully,

S. E. C. FINNEY,
First Assistant Secretary.

40 EXHIBIT M

F. S. 64229 "FS" JDY. Jun. 13, 1921.
1x G. F. D. Incl. N-7.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, June 8, 1921.

Dismissing Adverse Proceedings

REGISTER and RECEIVER,
Visalia, California.

SIRS: Referring to letter "FS" of January 14, 1914, and letter "FS" of March 2, 1921, charging sec. 36, T. 30 S., R. 23 E., M. D. M., to be mineral (petroleum) in character, I now inclose herewith copy of departmental letter of June 9, 1921, authorizing

and directing this office to dismiss the proceedings against the State of California and its transferees.

You will therefore close the case upon your records and notify all parties in interest of the dismissal.

Very respectfully,

S. WILLIAM SPRY, *Commissioner.*

6-9. EG.

41 EXHIBIT N

JUNE 28, 1921.

DEAR MR. ATTY. GENERAL: Under date of March 2, 1921, former Secy. John Barton Payne requested of your dept. that appropriate action be taken, through the local courts, looking to the protection of the Government interests pending final action under proceedings through the local land office at Visalia, California, charging sec. 16, T. 30 S., R. 23 E., M. D. M., to be mineral (oil) in substance.

On June 8, 1921, the transferees of the State of California, representatives of the Dept. of Justice, and of the Navy Department appeared before Secretary Fall and presented the matter orally, whereupon after consideration of the law and facts involved the Secretary verbally directed that the proceedings be dismissed, which order, the Commissioner of the Genl. Land Office advises me, was carried into effect by letter of June 9, 1921, to the register and receiver, Visalia, California.

In view thereof, the case has been closed.

Respectfully,

F. M. GOODWIN,
Assistant Secretary.

42 EXHIBIT O

"FS" 64229. MAY 8, 1925.

Prior action of the department vacated and hearing ordered

REGISTER and RECEIVER,
United States Land Office,
Visalia, California.

GENTLEMEN: By letter of the Commissioner of the General Land Office dated January 14, 1914, you were advised that from reports of a mineral inspector and special agent it appeared that the land involved in sec. 36, T. 30 S., R. 23 E., M. D. M., California—"is mineral in character and contains valuable deposits of petroleum, and that this fact was well known in 1901 and 1902, the years during which the land was surveyed and the plat of survey was approved by the U. S. Surveyor General."

Acting under said reports, the Commissioner of the General Land Office in said letter directed proceedings under the circular of January 19, 1911, on the charges—

"(1) That the land is mineral in character, containing valuable deposits of petroleum.

"(2) That the land was known to be mineral in character at and prior to the date of survey, December 20, 1901."

It appears that the papers in the matter were mislaid or misfiled and no further action taken until the chief of the field division at San

Francisco, California, advised under date of February 2, 1921, that the records had been found and that he desired certain information before proceeding further. Thereupon the matter was taken up by the Commissioner of the General Land Office, the latter hold-
43 ing in decision of March 2, 1921, that while the plat of survey of the lands in question was approved by the Surveyor General August 1, 1902, as stated in previous correspondence, the plat was not accepted nor approved by the General Land Office until January 26, 1903, and that under the holding of the Supreme Court of the United States in United States v. Morrison (240 U. S. 192) the right of the State would attach, if at all, at the date the survey was accepted and approved by the General Land Office, and not on the date of the preliminary approval by the United States Surveyor General.

Your office was thereupon directed to proceed in accordance with circular of February 26, 1916 (44 L. D. 572), on the charges—

"(1) That the land is mineral in character, containing valuable deposits of petroleum.

"(2) That the land was known to be mineral in character at and prior to date of acceptance of the plat of survey by your office, January 26, 1903."

On June 8, 1921, the attorney for the Standard Oil Company of California and representatives of others claiming said sec. 36 as transferees of the State of California appeared before the Secretary of the Interior, and the attorney for the Standard Oil Company argued their claim to the land and for the dismissal of the order for hearing hereinbefore described.

At the conclusion of the argument the Secretary of the Interior orally dismissed the proceedings, the order being subsequently communicated to the Commissioner of the General Land Office and other parties in interest in writing.

44 February 21, 1924, the Congress of the United States passed Public Resolution No. 6, 68th Congress, providing:

"That the Secretary of the Interior be, and he hereby is, directed forthwith to institute proceedings to assert and establish the title of the United States to sections 16 and 36, township 30 south, range 23 east, Mount Diablo meridian, within the exterior limits of naval reserve numbered 1 in the State of California, and the President of the United States is hereby authorized and directed to employ special counsel to prosecute such proceedings and any suit or suits ancillary thereto or necessary or desirable to arrest the exhaustion of the oil within said sections 16 and 36 pending such proceedings."

Since that time the record has been carefully reviewed, and it appears that the land in question (sec. 36) was returned as mineral by the surveyor who surveyed same in 1901, and whose survey was accepted and approved by the Commissioner of the General Land Office January 26, 1903. It also appears from the records that on March 7, 1903, the State of California offered the land in sec. 36 as a basis for the selection of indemnity school lands, because of the mineral character of said sec. 36. However, on December 18, 1909, the said selection was canceled, because of conflict with indemnity school-land selection R. and R. 622.

The township in which this section is located was withdrawn from agricultural entry September 14, 1908, pending classification by the

Geological Survey; was classified as oil land June 4, 1909, which classification was approved by the Secretary of the Interior June 7, 1909; was withdrawn from mineral entry by departmental order of September 27, 1909, pending proposed legislation and the previous order of withdrawal ratified, confirmed, and continued by
45 Executive order of July 2, 1910. Subsequently, by Executive order of September 2, 1912, it was placed in naval reserve No. 1.

It also appears that the State of California had attempted to dispose of the lands in said sec. 36 by contract of sale in 1900, which contract was sold by the State for delinquent taxes and redeemed by third parties in August, 1908. In November, 1909, the contract was purchased by the attorney for the Standard Oil Company, which company secured a deed from the State covering the same in January, 1910.

Oil and gas have been produced from sec. 36 since the year 1919, there being upon the section a large number of producing oil and gas wells. Lands in the same township, some of which adjoin sec. 36, were determined to have been mineral in character and so known at and prior to the date of the patent to the Southern Pacific Railroad Company in the year 1904 (251 U. S. No. 1).

It will appear from the foregoing recitation that while this land was returned as mineral in character by the surveyor in 1902, was withdrawn by the United States as mineral land in 1909, included in naval reserve in 1912, and has been since 1919 producing oil and gas in large quantities, and in spite of the fact that mineral inspectors and special agents of the Interior Department reported the lands to be mineral in character, and to have been so known at and prior to date of acceptance of survey, in January, 1903, and that hearing was twice ordered to determine the issues thus raised, no hearing has in fact been had or evidence taken in said matter,
46 the proceedings having been dismissed by a former Secretary of the Interior on legal argument presented by attorney for the Standard Oil Company et al., unaccompanied by any evidence as to the character of the land at date of approval of the survey, or of any argument on behalf of the Government of the United States.

The long-established and general practice of the Department of the Interior in land matters is that determinations are not made either upon reports of special agents or upon the statements of parties in interest in controverted matters, but that hearings or trials are ordered and held, at which all parties in interest may present testimony and where witnesses may be examined and cross-examined, as is customary in such proceedings. The facts have not been evidently presented before any tribunal and were not before the department at the time of the dismissal of the proceedings, as above outlined. It is the statutory duty of the Secretary of the Interior to determine the character of land as a prerequisite to its disposition and as a determination as to whether or not it passed under grants like the one in question, or whether, because of its mineral character, it was, under the law, reserved to the United States for other disposition, as provided by applicable statutes.

There are numerous decisions of this department to the effect that if the Commissioner of the General Land Office or the Secretary of the Interior shall, while the subject matter, i. e., the land, is within his jurisdiction, discover that a previous decision was
47 erroneous, unlawful, or unjust, he has authority and it would be his duty to, upon his own motion, review and reconsider the case and take such action as is proper and appropriate therein. (19 L. D. 312; 24 L. D. 64–280; 26 L. D. 640.)

Congress, by said joint resolution of February 21, 1924, having directed the Secretary of the Interior to institute proceedings to assert and establish the title of the United States under said sec. 36, T. 30 S., R. 23 E., it appearing, as hereinbefore recited, that the land was returned as mineral by the surveyor, that it is alleged by inspectors and special agents of this department that the land is mineral in character, and was so known prior to January 26, 1903, date of acceptance of survey, there having been no determination of the facts with respect to the land or its contents, the action of the former Secretary of the Interior of June 8, 1921, is hereby reversed, vacated, and set aside, and a hearing is ordered on the charges—

"(1) That the land is mineral in character, containing valuable deposits of petroleum and natural gas.

"(2) That the land was known to be mineral in character at and prior to the date of the acceptance of the plat of survey by the General Land Office, January 26, 1903."

You will notify the State of California, the Standard Oil Company, Francis J. Carman, Pan American Petroleum Company, and others claiming title, directly or indirectly, in or to any portion of said sec. 36, hereof, and by agreement of parties, or otherwise, determine upon a date for hearing, to be held at your office.

Sincerely yours,

(Signed) HUBERT WORK,
Secretary.

48 EXHIBIT P

4–018a. 21–90. Aug. 1, 1925. JMO. W. F. H.

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
Visalia, California, July 28, 1925.

UNITED STATES
vs.
STATE OF CALIFORNIA; STANDARD OIL Co. of California
} Involving section 36, T. 30 S., R. 23 E., M. D. M.

Mrs. Sidney H. Greeley;
Frank J. Carman;
Charles O. Fairbank;
Edward L. Doheny;
Thomas A. O'Donnell;
Pan-American Petroleum Company;
Valley Natural Gas Company;
Associated Oil Company.

To STANDARD OIL CO. OF CALIFORNIA.—

By authority of the letter of Secy. of Interior "FS" 64229, dated May 8, 1925, in the matter of the above-entitled case, you are hereby notified that the following charges have been filed by a

representative of the General Land Office against the validity of your entry, as described in the caption hereof, to wit:

"(1) That the land is mineral in character, containing valuable deposits of petroleum and natural gas.

"(2) That the land was known to be mineral in character at and prior to the date of the acceptance of the plat of survey by the General Land Office, January 26, 1903."

You are notified that if you fail to file in this office within thirty days of date of service of this notice, a written or printed answer, under oath, denying each of said charges, or showing a state of facts rendering said charges immaterial, and applying for a hearing to determine the truth of said charges and answer, or if
49 you fail to appear at a hearing applied for, your said above entry or claim will be forthwith reported to the Commissioner of the General Land Office for rejection or cancellation.

A copy of said letter "FS" of May 8, 1925, was mailed to you on June 12, 1925.

s. W. S. HUNSAKER, *Register.*

M.

50 EXHIBIT Q

1–485

DEPARTMENT OF THE INTERIOR.
Washington, August 17, 1925.

Involving "FS" 64229

Sec. 36, T. 30 S., R. 23 E., M. D. M.

Motion denied Aug. 17, 1925.

Messrs. Pillsbury, Madison & Sutro,
Standard Oil Building,
San Francisco, California. Registered.

SIR: Inclosed find copy of department decision in above-entitled case.

Respectfully,

E. C. FINNEY,
First Assistant Secretary.

August 17, 1925.

Sec. 36, T. 30 S., R. 23, E., M. D. M. "FS" 64229.
Hearing ordered.
Motion denied.

Motion for rehearing

Departmental decision of May 8, 1925, addressed to the register and receiver, United States land office, Visalia, California, reversed, vacated, and set aside the prior action of the department and ordered a hearing with respect to sec. 36, T. 30 S., R. 23 E. M. D. M., California, claimed by the Standard Oil Company of California, et al., on the charges —

51 "(1) That the land is mineral in character, containing valuable deposits of petroleum and natural gas.

"(2) That the land was known to be mineral in character at and prior to the date of the acceptance of the plat of survey by the General Land Office, January 26, 1903."

I am now in receipt of a communication from Messrs. Pillsbury, Madison & Sutro, attorneys for the Standard Oil Company, in the nature of a plea in bar to the jurisdiction of the Secretary.

The questions raised in said paper or motion were all within the knowledge of, and considered by, the department prior to and at the time of said decision of May 8, 1925, and no reason is found to set aside, modify, or suspend said departmental decision of May 8, 1925.

The motion, or petition, is accordingly hereby denied, and the hearing ordered by decision of May 8, 1925, will proceed.

(Signed) HUBERT WORK, *Secretary.*

52 *Motion for rule to show cause*

Filed October 9, 1925

* * * * * * *

Now comes the plaintiff, Standard Oil Company, by its attorneys, and upon its sworn bill of complaint, with exhibits annexed thereto, filed herein on the 9th day of October, A. D. 1925, moves this honorable court to issue a rule addressed to Hubert Work as Secretary of the Interior, the defendant named therein, commanding and requiring him, said defendant, Hubert Work, Secretary as aforesaid, to show cause, on or before a day to be fixed, why an injunction pendente lite should not issue in said cause as prayed.

OSCAR SUTRO,
MCKENNEY & FLANNERY,
Attorneys for Plaintiff, Standard Oil Company.

PILLSBURY, MADISON & SUTRO,
Of Counsel.

53 *Rule to show cause*

Filed October 9, 1925

* * * * * * *

This cause having come on to be heard upon plaintiff's bill of complaint and accompanying exhibits and plaintiff's motion for a rule to show cause, it is this 9th day of October, A. D. 1925, adjudged and ordered that the defendant, Hubert Work, Secretary of the Interior, show cause herein by or before ten o'clock a. m. on the morning of Saturday, October 17th, 1925, why an injunction pendente lite as prayed should not be issued herein, provided that a copy of this rule to show cause with a copy of plaintiff's bill of complaint as filed herein, annexed thereto, shall be served upon the said Hubert Work, Secretary of the Interior, defendant above named, by or before the expiration of Saturday, the 10th day of October, A. D. 1925.

WALTER I. MCCOY, *Chief Justice.*

Marshal's return

Served a copy of the within rule & petition on Hubert Work personally, 10/9/25.

E. C. SNYDER, *U. S. Marshal.*
F.

54 *Answer of defendant*

Filed October 17, 1925

* * * * * * *

To the Supreme Court of the District of Columbia:

Comes now Hubert Work as Secretary of the Interior, the defendant herein, and for answer to the bill of complaint and as a return upon the order to show cause, issued herein, states as follows:

I. Answering Paragraph I of the bill, this defendant admits the same.

II. Answering Paragraph II of the bill, this defendant admits the same, except that he denies that the right to any part of the lands described in said Paragraph II, together with the possession and the right to the continued possession thereof, is vested in the plaintiff. The defendant denies that said lands were acquired by the plaintiff lawfully, and completely, or in any other manner, or at all, but alleges the fact to be that the lands described in said Paragraph II are now, and at all times, mentioned in the said complaint, have been public lands of the United States.

III. Answering Paragraph III of the complaint, defendant
55 admits the same, except that defendant denies that the title to section 36, township 30 south, range 23 east, Mount Diablo base and meridian, in Kern County, State of California, vested in the State of California on January 26, 1903, or at any other time whatsoever. This defendant denies that at said date or at any other time did the State of California acquire any right, title, or interest whatsoever in and to the said section 36, for the reason that said act of Congress did not convey to the State of California any lands which were known mineral lands at the date of the approval of the survey, and that said section 36 was known mineral land at said date, as is more particularly set forth hereafter in this answer.

Defendant alleges that that part of section 3 of the act of Congress of March 3, 1853, quoted in Paragraph III of the complaint was specifically repealed by the act of July 9, 1870 (16 Stat. at Large, 217–8), also by section 2406 of the United States Revised Statutes, which expressly extended the public surveys over all mineral lands.

IV. Answering Paragraph IV of the complaint, the defendant admits the same, except that he denies that by order dated April 5, 1904, or at any other time, the Acting Commissioner of the General Land Office determined that said section 36 was nonmineral lands, or that the title of the State of California to said section was thereby finally determined and settled. Defendant alleges that said order

IX. For answer to paragraph IX of the complaint, this defendant admits the same. A copy of the letter of January 14, 1914, from the Commissioner of the General Land Office instructing the register and receiver at Visalia to institute adverse proceedings against said section 36, is attached hereto and made a part hereof, marked "Exhibit 1."

X. The defendant on information and belief admits the allegations in the first three paragraphs of paragraph X of the complaint, but defendant is informed and believes and therefore alleges that the notice of the hearing of June 8, 1921, indicated that said hear-
60 ing was to be simply an informal proceeding for the purpose of listening to the legal argument of the attorney for plaintiff upon his request for a dismissal of the charges against said section, and not for the purpose of taking or considering evidence upon any question of fact as to the mineral or nonmineral character of said section 36, in January, 1903; that none of the persons in the employ of the Government, named in the complaint as present at said hearing, was informed or understood that evidence on said question of fact was to be presented or considered; and that no competent or legal evidence whatsoever, as to said fact, was presented or considered at said hearing, but simply the informal, unsworn statement of plaintiff's attorney and his argument. No argument supporting the Government's position and no presentation of its claim was had, and there was no adjudication of the question of fact. The complete record of the proceedings at said hearing is attached hereto and made a part hereof and marked "Exhibit 2," from which it will be seen that the decision of Secretary Fall dismissing the charges against said section 36 was erroneous, unlawful, and unjust in that the same was not based upon any evidence taken on the question of fact in accordance with the established rules and practice of the Department of the Interior, nor upon any argument upon the facts so ascertained, and in that said decision was based upon a mistaken view of the law, to wit, that the land in question had been theretofore adjudicated as nonmineral by the Department of the Interior, whereas in fact no such adjudication had been made.

That neither the Attorney General's office, the Navy Department, the Department of Justice, or any of the officials or employees of the same, who may have been present at said hearing, had any authority to represent, nor did they represent, the United States in
61 the decision of any questions of fact relating to the known mineral character of said section 36, for the reason that the decision of said questions is exclusively within the jurisdiction of the Department of the Interior.

Defendant on information and belief denies that at said hearing any admissions were made or intended to be made by any representative of the Government concerning questions of fact as to the known mineral character of said section 36 in January, 1903, but that any admissions made at said hearing as alleged in the complaint related solely to the facts disclosed in the official files and records of the Department of the Interior.

Defendant denies that the decision of the Secretary of the Interior of June 8, 1921, is or was a final adjudication and judgment respecting a matter within his exclusive jurisdiction. Defendant further

alleges that said decision was not and did not purport to be an adjudication and judgment of the known mineral or nonmineral character of the lands in said section 36 as of the date of the approval of the survey thereof or at all; that the said decision was unlawful, erroneous, and unjust, and was therefore subject to review and reversal by this defendant.

XI. Defendant admits the allegations of paragraph XI of the complaint, except that defendant alleges that he not only "purported to reverse, vacate, and set aside" the action of the former Secretary of the Interior of June 9, 1921, but that he actually did reverse, vacate, and set aside said action.

XII. For answer to paragraph XII of the complaint, this defendant denies the same and every part thereof, particularly denies that plaintiff will suffer any irreparable damage if the injunction prayed for is not granted.

62 For a further and affirmative answer upon the issues raised by the bill of complaint herein, this defendant alleges as follows:

XIII. That the lands described in the complaint, to wit, the west half (W. ½) and the west half of the east half (W. ½ of E. ½) and lots five (5), six (6), seven (7), eight (8), eleven (11), and twelve (12) in said east half (lots 5, 6, 7, 8, 11, and 12 of E. ½) of section thirty-six (36), township thirty (30) south, range twenty-three (23) east, Mount Diablo base and meridian, all of said lands lying and being within the limits of Kern County, in the State of California, are now and at all times mentioned in the complaint have been public lands of the United States, and that the same are now and at all times have been wholly and exclusively within the jurisdiction of the Department of the Interior, of which said department this defendant is the Secretary, and he makes this answer in his official capacity and under his official authority and duty as such Secretary of the Interior of the United States.

XIV. The Department of the Interior has the sole and exclusive jurisdiction and authority and is charged with the entire responsibility for the determination of the mineral or nonmineral character of all public lands. The act of Congress approved March 3, 1853, entitled "An act to provide for the survey of the public lands in California, the granting of preemption rights therein, and for other purposes," referred to in paragraph III of the complaint, did not pass title to the State of California of any lands for school purposes which were known to be mineral at the date of the ap-

63 proval of the survey of the same. The Department of the Interior has never passed upon nor determined the mineral or nonmineral character of the lands in said section 36. The lands in said section 36, together with the other unsurveyed lands in said township, were surveyed in the years 1901 and 1902, and plat of survey was thereafter filed and was duly accepted and approved by the Commissioner of the General Land Office on January 26, 1903. The said lands were returned as mineral lands by the surveyor who surveyed the same, and the plat and field notes of said official survey showing that said section 36 was mineral in character were at all times thereafter on file in the office of the United States

IX. For answer to paragraph IX of the complaint, this defendant admits the same. A copy of the letter of January 14, 1914, from the Commissioner of the General Land Office instructing the register and receiver at Visalia to institute adverse proceedings against said section 36, is attached hereto and made a part hereof, marked "Exhibit 1."

X. The defendant on information and belief admits the allegations in the first three paragraphs of paragraph X of the complaint, but defendant is informed and believes and therefore alleges that the notice of the hearing of June 8, 1921, indicated that said hear-
60 ing was to be simply an informal proceeding for the purpose of listening to the legal argument of the attorney for plaintiff upon his request for a dismissal of the charges against said section, and not for the purpose of taking or considering evidence upon any question of fact as to the mineral or nonmineral character of said section 36, in January, 1903; that none of the persons in the employ of the Government, named in the complaint as present at said hearing, was informed or understood that evidence on said question of fact was to be presented or considered; and that no competent or legal evidence whatsoever, as to said fact, was presented or considered at said hearing, but simply the informal, unsworn statement of plaintiff's attorney and his argument. No argument supporting the Government's position and no presentation of its claim was had, and there was no adjudication of the question of fact. The complete record of the proceedings at said hearing is attached hereto and made a part hereof and marked "Exhibit 2," from which it will be seen that the decision of Secretary Fall dismissing the charges against said section 36 was erroneous, unlawful, and unjust in that the same was not based upon any evidence taken on the question of fact in accordance with the established rules and practice of the Department of the Interior, nor upon any argument upon the facts so ascertained, and in that said decision was based upon a mistaken view of the law, to wit, that the land in question had been theretofore adjudicated as nonmineral by the Department of the Interior, whereas in fact no such adjudication had been made.

That neither the Attorney General's office, the Navy Department, the Department of Justice, or any of the officials or employees of the same, who may have been present at said hearing, had any authority to represent, nor did they represent, the United States in
61 the decision of any questions of fact relating to the known mineral character of said section 36, for the reason that the decision of said questions is exclusively within the jurisdiction of the Department of the Interior.

Defendant on information and belief denies that at said hearing any admissions were made or intended to be made by any representative of the Government concerning questions of fact as to the known mineral character of said section 36 in January, 1903, but that any admissions made at said hearing as alleged in the complaint related solely to the facts disclosed in the official files and records of the Department of the Interior.

Defendant denies that the decision of the Secretary of the Interior of June 8, 1921, is or was a final adjudication and judgment respecting a matter within his exclusive jurisdiction. Defendant further

alleges that said decision was not and did not purport to be an adjudication and judgment of the known mineral or nonmineral character of the lands in said section 36 as of the date of the approval of the survey thereof or at all; that the said decision was unlawful, erroneous, and unjust, and was therefore subject to review and reversal by this defendant.

XI. Defendant admits the allegations of paragraph XI of the complaint, except that defendant alleges that he not only "purported to reverse, vacate, and set aside" the action of the former Secretary of the Interior of June 9, 1921, but that he actually did reverse, vacate, and set aside said action.

XII. For answer to paragraph XII of the complaint, this defendant denies the same and every part thereof, particularly denies that plaintiff will suffer any irreparable damage if the injunction prayed for is not granted.

62 For a further and affirmative answer upon the issues raised by the bill of complaint herein, this defendant alleges as follows:

XIII. That the lands described in the complaint, to wit, the west half (W. ½) and the west half of the east half (W. ½ of E. ½) and lots five (5), six (6), seven (7), eight (8), eleven (11), and twelve (12) in said east half (lots 5, 6, 7, 8, 11, and 12 of E. ½) of section thirty-six (36), township thirty (30) south, range twenty-three (23) east, Mount Diablo base and meridian, all of said lands lying and being within the limits of Kern County, in the State of California, are now and at all times mentioned in the complaint have been public lands of the United States, and that the same are now and at all times have been wholly and exclusively within the jurisdiction of the Department of the Interior, of which said department this defendant is the Secretary, and he makes this answer in his official capacity and under his official authority and duty as such Secretary of the Interior of the United States.

XIV. The Department of the Interior has the sole and exclusive jurisdiction and authority and is charged with the entire responsibility for the determination of the mineral or nonmineral character of all public lands. The act of Congress approved March 3, 1853, entitled "An act to provide for the survey of the public lands in California, the granting of preemption rights therein, and for other purposes," referred to in paragraph III of the complaint, did not pass title to the State of California of any lands for school purposes which were known to be mineral at the date of the ap-

63 proval of the survey of the same. The Department of the Interior has never passed upon nor determined the mineral or nonmineral character of the lands in said section 36. The lands in said section 36, together with the other unsurveyed lands in said township, were surveyed in the years 1901 and 1902, and plat of survey was thereafter filed and was duly accepted and approved by the Commissioner of the General Land Office on January 26, 1903. The said lands were returned as mineral lands by the surveyor who surveyed the same, and the plat and field notes of said official survey showing that said section 36 was mineral in character were at all times thereafter on file in the office of the United States

Surveyor General of the State of California and in the office of the Secretary of the Interior at Washington, D. C., and the same were official public records, and the plaintiff and all other persons were charged with notice and knowledge of the same. Said return was and is prima facie evidence of the mineral character of said section 36, and the burden of proof is upon anyone asserting to the contrary.

XV. Under the laws of the United States where lands allotted to a State for school purposes are known mineral in character at the time of the approval of the survey, they do not pass to the State, but the State is permitted to select indemnity or lieu lands nonmineral in character in place thereof.

On July 29, 1902, the State of California filed its application, dated July 28, 1902, numbered R. & R. No. 622, to take section 6, T. 44 N., R. 3 E., M. D. B. & M., as indemnity for deficit in school lands in sec. 36, T. 2 S., R. 5 E., S. B. B. & M.

On March 7, 1903, the State of California filed with the United States land office at Visalia its application dated January 3, 1903, numbered R. & R. No. 792, to take sec. 6, T. 44 N., R. 3 E.,
64 M. D. M., as indemnity for deficit of school lands in "mineral sec. 36, T. 30 S., R. 23 E., M. D. B. & M." On August 15, 1905, the State of California filed its application to amend said application, R. & R. No. 792, by the substitution of certain lands in sec. 16, T. 10 N., R. 5 E., B. H. M., as a base therefor, instead of the said section 36. The Commissioner of the General Land Office by letter dated December 18, 1909, disallowed said selection, R. & R. 792, on the ground that the said indemnity land therein applied for had been covered by the prior application of July 29, 1902, of the State of California, being R. & R. No. 622, all of which more particularly appears in the letter of the Commissioner of the General Land Office dated December 18, 1909, copy of which is attached hereto and made a part hereof and marked "Exhibit 3." Any claim which the State of California might have asserted to said land was therefore waived during such period of tender and plaintiff is barred from claiming any rights arising under or through the State during said period.

XVI. By instructions dated October 26, 1905, the Secretary of the Interior discussed rules and regulations concerning the character of evidence to be considered by the Department of the Interior in determining the mineral or nonmineral character of public lands. The said instructions are published in vol. 34 of the Land Decisions, beginning on page 194, and announced that in such determination the well-known rules of evidence are as applicable as in any other case and whatever is relevant to and bears in any degree upon the question of the character of a given tract of land is admissible in evidence to the end of its ascertainment and that in the nature of of things reliance must frequently be had upon such evidence as may become the guide of the geologist or expert, also that evidence of this character had in several earlier cases been given consideration and had never been held inadmissible by the department. The
65 rules of evidence therein recognized were applied in various instances prior to March 6, 1903, and since their publication have been, and now are, the established and controlling rules and regulations of the Department of the Interior upon all issues involv-

ing the determination of the mineral or nonmineral character of public lands. That under and in accordance with those rules and regulations, the geological formations, physical conditions, and other topographical indications upon said section 36 and adjacent lands in January, 1903, were and are of such a character as to make evident the fact that said section 36 was located practically upon the crest of an anticlinal structure favorable for the accumulation and retention of oil and that the same was mineral land and contained oil in such quantity and of such quality as would render its extraction profitable and justify expenditures to that end.

XVII. The township in which said section 36 is located was withdrawn from agricultural entry September 14, 1908, by departmental order, pending classification by the United States Geological Survey; was classified as oil land June 4, 1909, which classification was approved by the Secretary of the Interior by order of June 7, 1909. It was withdrawn from mineral entry by departmental order of September 27, 1909, pending proposed legislation, and the previous order of withdrawal was ratified, confirmed, and continued by Executive order of July 2, 1910. By Executive order of September 2, 1912, said section 36 was included within naval reserve No. 1. All of said orders upon the dates respectively shown became matters of public record in the United States land office at Visalia, California, and in the records of the Department of the Interior at Washington,
66 D. C., and plaintiff and all other parties were and are charged with knowledge of the same.

Any attempted purchase of lands in section 36 or acquisition of any interest therein alleged to have been made by plaintiff and any expenditures made by plaintiff in drilling said lands, were done and made while charged with knowledge of the foregoing actions and claims of the United States with respect to said section.

XVIII. It is and at all times mentioned in the complaint has been the long-established, well-recognized, and controlling practice of the Department of the Interior in determining the character of public lands in contested cases that such determinations are not made either upon the reports of special agents or upon the statements of parties in interest, but that hearings or trials are held at which all parties in interest may present testimony and where witnesses may be subjected to examination and cross-examination under oath, and where arguments may be made for all parties. It is likewise the long-established, well-recognized, and controlling practice of the Department of the Interior for the Commissioner of the General Land Office or the Secretary of the Interior, so long as the land is within his jurisdiction, if he discovers that a previous decision or ruling was erroneous, unlawful, or unjust, to review and reconsider the case and take such action as is proper and appropriate therein. That the decision of the Secretary of the Interior of June 8, 1921, dismissing the charges against said section 36, as alleged in the complaint, was erroneous, unlawful, and unjust, in that it was not based upon evidence taken in accordance with the established rule and practice above set
67 out nor on argument upon the facts so ascertained, and in that said decision was manifestly based upon a mistaken view of the law, to wit, that the land in question had been theretofore ad-

judicated as nonmineral by the Department of the Interior, whereas in fact no such adjudication has ever been made.

The decision of the Secretary of the Interior of June 8, 1921, dismissing the charges against said section 36 as alleged in the complaint, was not and did not purport to be an adjudication and determination of the known mineral or nonmineral character of said land as of the date of the approval of the survey of said section 36 or at all.

XIX. The Congress of the United States, by joint resolution of February 21, 1924, enacted as follows:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he hereby is, directed forthwith to institute proceedings to assert and establish the title of the United States to sections 16 and 36, township 30 south, range 23 east, Mount Diablo meridian, within the exterior limits of naval reserve numbered 1 in the State of California, and the President of the United States is hereby authorized and directed to employ special counsel to prosecute such proceedings and any suit or suits ancillary thereto or necessary or desirable to arrest the exhaustion of the oil within said sections 16 and 36 pending such proceedings."

XX. That in accordance with the aforesaid joint resolution of Congress and under the authority belonging to this defendant, after investigation into the surrounding facts and circumstances issued his order of May 8, 1925, copy of which is attached to the complaint herein as Exhibit O, he did reverse, vacate, and set aside the action of the former Secretary of the Interior of June 8, 1921, and did order a hearing before the register and receiver of the United States land office at Visalia, in the State of California, on the
68 charge (1) that the land in said section 36 is mineral in character, containing valuable deposits of petroleum and natural gas, and (2) that the land was known to be mineral in character at and prior to the date of the acceptance of the plat of survey by the General Land Office, January 26, 1903.

Notice of said charges and the proposed hearing thereon was duly given to the defendant herein and the other parties claiming title or interest in and to the lands in said section 36. Said hearing is now pending before said register and receiver, and no determination of the issues involved has yet been made.

This court is wholly without jurisdiction to adjudicate or determine any issues dealing with the known mineral or nonmineral character of the lands in said section 36 as of the date of the approval of the survey of the same or at all.

That exclusive jurisdiction to determine the mineral or nonmineral character of public lands reposes in the Department of the Interior; that no such adjudication as to section 36 has as yet been made by the Department of the Interior, and this defendant as Secretary of said department in the exercise of that jurisdiction and pursuant to the direction of Congress by its joint resolution above mentioned, is proceeding to such determination, and while such proceeding is pending this court can not take jurisdiction over any such questions.

XXI. That this defendant, in reversing and vacating the said order of Secretary Fall of June 8, 1921, and in instituting proceeding against said section 36, as alleged in the complaint, is acting under the authority of and in response to the direction of the Con-

69 gress of the United States as set forth in the said joint resolution of February 21, 1924, and is asserting title to said lands in behalf of the United States. This defendant has no personal or individual interest in the matters or issues here involved. The bill of complaint seeks the adjudication by this court of plaintiff's title to said lands. The United States is not a party to this suit and has not consented to be sued herein. This court can not proceed with this cause in the absence of the United States as a party defendant. Furthermore, to enjoin this defendant as prayed for in the complaint is not within the powers of this court, but would be an illegal interference with and restraint upon the executive and legislative branches of the Government.

Wherefore defendant prays that the bill of complaint may be dismissed and that he may go hence with his costs and disbursements.

W. C. MORROW,
Special Counsel.
H. L. UNDERWOOD,
Assistant Attorney General
of the United States.

70 DISTRICT OF COLUMBIA, *ss:*

Hubert Work, being first duly sworn, deposes and says that he is the defendant named in the foregoing answer; that he has read the same and knows the contents thereof; that the same is true of his own knowledge as to all matters therein set forth, except as to such matters as are therein stated on information and belief, and that as to these matters he believes them to be true.

[SEAL.] HUBERT WORK.

Subscribed and sworn to before me this 15th day of October, 1925.

[NOTARIAL SEAL.] W. BERTRAND ACKER,
Notary Public in and for the District of Columbia.

71 EXHIBIT 1

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, January 14, 1914.

REGISTER and RECEIVER,
Visalia, Calif.

SIRS: The chief of the field division at San Francisco, under date of April 5, 1913, transmitted to this office the reports of a mineral inspector and a special agent, from which it appears that the land embraced in sec. 36, T. 30 S., R. 23 E., M. D. M., is mineral in character and contains valuable deposits of petroleum, and that this fact was well known in 1901 and 1902, the years during which the land was surveyed and the plat of survey was approved by the United States Surveyor General.

The township was withdrawn from agricultural entry September 14, 1908, pending classification by the Geological Survey, was classified as oil land June 4, 1909, which classification was approved by the Secretary of the Interior June 7, 1909; was withdrawn from mineral entry by departmental order of September 27, 1909, pending proposed legislation and was included in petroleum reserve No. 2 by Executive order of July 2, 1910, and naval petroleum reserve No. 1 by Executive order of September 2, 1912. No other withdrawals.

The records of this office show that a survey of the subdivisional lines of said township was made December 20, 1901, and the official plat thereof was approved by the Surveyor General on August 1, 1902. It appears from the field notes and official plat on file in this office that the land in said section 36 was returned as mineral in character by the surveyor who executed the survey and by the Surveyor General. The following indorsement appears upon the official plat of survey:

72 "Mineral land (in Midway mineral district), section 36 (other described lands), surveyed in Duee, is reported by him to be more valuable for mineral than for agricultural purposes."

It also appears from the records of this office that on March 7, 1903, the State offered the land in said section 36 as base for an indemnity school selection, bearing State No. 3782 and R. & R. No. 792, upon the ground that the said base land is mineral in character. However, on December 18, 1909, the said selection was canceled by office letter G because of conflict with indemnity school-land selection R. & R. No. 622.

You will therefore proceed in this case in accordance with the circular of January 19, 1911, and in the notice provided for in paragraphs 3, 4, and 5 thereof you will state that a mineral inspector and a special agent of the office charge:

1. That the land is mineral in character, containing valuable deposits of petroleum.

2. That the land was known to be mineral in character at and prior to the date of survey, December 20, 1901.

You will confer with the chief of field division, ascertain the names and addresses of all interested parties, and serve said notice upon said parties by registered mail, as provided in said circular January 19, 1911, and proceed in all other particulars as directed in said circular.

Very respectfully,

(s.) CLAY TALLMAN, *Commissioner.*

1-14-1914.
A. B. C.

73 EXHIBIT 2

Before the honorable the Secretary of the Interior

In the matter of section 36, township 30 south, range 23 east (in Kern County, California)

STENOGRAPHIC TRANSCRIPT OF PROCEEDINGS HAD BEFORE HONORABLE ALBERT B. FALL, SECRETARY OF THE INTERIOR, IN HIS OFFICE AT THE DEPARTMENT OF THE INTERIOR, WASHINGTON, D. C., WEDNESDAY, JUNE 8, 1921, AT 2 O'CLOCK P. M.

Present:

Honorable Albert B. Fall, Secretary of the Interior.
Honorable E. C. Finney, Assistant Secretary of the Interior
Mr. E. H. Hamel, of San Francisco, appearing for the Land Office.
Mr. E. D. Caldwell, Special Assistant Attorney General.
Commander H. A. Stuart, appearing on behalf of the Bureau of Steam Engineering, United States Navy.
Mr. Harry L. Underwood, Solicitor of the Department of Justice.
Mr. Oscar Sutro, appearing for the Standard Oil Company of California.
Mr. J. J. Cotter,
Mr. E. L. Doheny,
Mr. Frederick R. Kellogg, and
Mr. Thomas O'Donnell,
appearing on behalf of the Pan-American Petroleum Company.
Mr. J. Barrett Carter, appearing on behalf of F. J. Carman, one of the claimants.

74 Secretary FALL. Now, gentlemen, we will proceed in a free-for-all manner. We will hear from you first, Mr. Sutro.

Statement of Mr. Oscar Sutro, on behalf of the Standard Oil Company of California

Mr. SUTRO. This is an application, Mr. Secretary, to have the Department of the Interior exercise its jurisdiction to determine that section 36 in township 30 south, range 23 east, in Kern County, in California, is a school section in place, title to which is vested in the State, and that the title has been so vested since the day of the survey and the approval of that survey, which was, if I remember correctly, March, 1903, or possibly since the filing of the approved plat, which would be a month later. There is some question in my mind which is the governing date, but it is either March or April, and I think the First Assistant Secretary, who knows a great deal about these matters, is of the opinion that the approval in Washington is the governing date.

The township in which this section of land is situated, together with forty other townships, was withdrawn in 1900, on the petition

of some 800 miners, who alleged that a great deal of mineral land in California was being acquired by the agricultural route, and that they were being deprived of the opportunity of filing entries. The Commissioner of the General Land Office acted on that proposition. This land, of course, at that time had not been surveyed.

Along in 1902 the Southern Pacific Railroad, among the lands or land that it had leased in place, wanted to make selections in this township, and it found this order of suspension, and also that
75 the township, was not surveyed, and I think it was on the application of the railroad company that a survey was had. A survey was begun in 1901, completed in 1902, approved in 1903.

Then the railroad found this order of suspension on the allegation that the land was mineral. On the application of the railroad company a man by the name of Ryan was appointed to make an investigation of the land—not only of this land, but the entire forty townships. He made an investigation, and he made a report, and his report was that township 30 south, range 23 east, which includes this section, was not mineral. The Secretary of the Interior thereupon restored that township and a great many other lands to agricultural entry. And we claim that that was an adjudication of the character of this land.

The State of California in 1908, four years later, obtained from the register and receiver at Visalia a certification that this land was free of all claim by the United States. That certification was obtained at the instance of George Hay and Mason Buffington, who sought to purchase the land from the State.

Now that certification, while issued under a statute in California, I think, has no official status in the Land Office. I think the Land Office has never recognized the right of the register and receiver to issue such a certificate, but the Supreme Court of the United States on various occasions has referred to the issuance of such certification as one of the evidences on which the State could rely to support its title to school land. You will find a case on that point in 96 U. S., Water Mining Company vs. Bugbey.

On the face of that certificate and on the face of this order restoring the land the State sold the land in 1909 to George Hay
76 and Mason Buffington, and in due course, in 1910 issued a State patent therefor.

In 1914 the litigation against the Southern Pacific Railroad for the cancellation of its patents in the Elk Hills, which is where this land is situated, was begun, and it was part of that plan of litigation which had for its purpose the conservation of naval reserve No. 1, where all this land is located. A proceeding was instituted against this section in the Land Office. No papers were ever served, in fact, have not yet been served, and the proceeding itself was not brought to the attention of any person until within the last three or four months, shortly before the expiration of the last administration, when the proceeding was ordered to be revived.

If I may say, Mr. Secretary, I would appreciate it if Mr. Hamel or any of the gentlemen representing the Government would interrupt me if I make any statement of fact that does not accord with their understanding.

Mr. HAMEL. The Elk Hill suit was begun in 1912 instead of 1914.

Mr. SUTRO. Yes; but this proceeding was a part of the same scheme to get that whole reserve.

Mr. HAMEL. It was the result of an examination made at that time, or right following it.

Mr. SUTRO. Yes.

Secretary FALL. That was at the time, or contemporaneously, or practically so, with the proceedings against the railroad company, was it?

Mr. HAMEL. I didn't quite understand you.

Secretary FALL. Proceedings were brought against the railroad company, I say, for the cancellation of certain entries that they had there upon the theory that it was oil land?

77 Mr. HAMEL. Yes, sir.

Secretary FALL. Those cases went to the Secretary.

Mr. HAMEL. Yes.

Secretary FALL. This proceeding with reference to 36 was practically at the same time, was it?

Mr. HAMEL. Yes; about two years following, or substantially the same time.

Mr. SUTRO. Well, it is a fact, Mr. Secretary, that in its inception the railroad litigation took a different form than that which it subsequently took. But at any rate, it was approximately contemporaneous.

Now, in 1916—and I mention this as not at all binding upon this department or as conclusive in any way—but in 1916 various companies in naval reserve No. 1 having lands there tendered these lands to the Navy. The Navy said it wanted them for its reserve, and we said, "We will give them to you." The condition that was requested was that the litigation in naval reserve No. 2 should be adjusted.

The answer to that offer, although the Geological Survey of the Department of the Interior had pointed out the oil possibilities of some of this land—the answer that the Navy made to that tender was that the land was not oil land, and they did not want it. Now, that was testified to, under oath by Mr. Daniels, who, I will say, testified merely on the reports of his subordinates; by Commander Landis, who was very conversant with the situation; by Commander Richardson, Commander Wright, and Assistant Secretary Roosevelt; and finally a man by the name of Mr. Latham, who was reported to the Senate committee as being the greatest oil expert in California, told that committee under oath in 1916 that this was not commercial oil land at all and was of no value to the Navy.

78 And that is the section which you are now asked to institute proceedings to take away from people who have developed it, on the theory that it was well-known oil land in 1903.

After the Navy had declined that tender the land lay dormant, as it had been lying dormant for thirteen or fourteen years, until the great oil shortage of 1919, when the Standard Oil Company, which drilled everywhere where a drill could be dropped at that time with any hope of success, drilled this section and discovered oil. Now that was fifteen years after the land had been classified by the department. It was nine years after the Government had indicated that it might assert a claim to the land, and I submit that on the

theory of laches and limitations alone it is an inequitable proceeding, and one that the Government, if there is ever to be any security of titles, should not foster.

Now, the points against the claims to this land, the points upon which the Government relies, are the ones that I want to address myself to.

There is, first, the circumstance that this land was returned as mineral by the surveyor. It is true that on the plat originally surveying this land, there is a notation that it is mineral land, and in the notes there is nothing until you come to the certificate at the end of the notes, where there is a statement that the land throughout this township contains asphaltum exudations, which are a well-known sign of oil. I think even if that had been true it would not make any difference, as I expect to satisfy you, but the fact is that there is no asphaltum outcropping in this township, and there never has been, and I don't think that is disputed.

What happened was that the chainman, or whoever the deputy was who made the descriptions, confused the conditions in McKittrick Township, where there are asphaltum exudations,
79 and running from the southeast to the northeast, with the adjoining township, which is the one he is describing, and I don't think there is any dispute about that. And, of course, that is a point of fact upon which somebody's word should be taken. But I have a sample of the outcroppings that are in this township, and this is a sample of what they are [handing sample to Secretary Fall]. That is the only outcropping in that township. It is a calcareous sandstone.

Assuming for a moment, however, that the report of the surveyor, and his return as mineral, could be considered, the Land Office decisions are multitudinous that a surveyor's report does not amount to anything.

The Supreme Court of the United States has passed on the same question in the Barden case in the 154 U. S., and has there referred to the fact that the department has universally considered the surveyor's report as of slight or no consequence, and approved the ruling of the department in that respect in some very interesting language, saying that the surveyor, under the statute, was supposed to survey only the exterior lines; that his qualifications were very seldom known, and that apart from the contribution that his return might make to the general knowledge on the subject it has no weight at all. I think that is well-established law. I don't think there is any question about that.

Now, even that slight contribution to the general information on the subject falls when you take into consideration the fact that this surveyor throughout his notes—and I have examined every page of them, and there are 234 pages—does not refer to a single miners showing. It is only at the conclusion of his notes that he speaks of these asphaltum exudations, and that is the only thing that he speaks of. He does not speak of a seepage, he does not speak
80 of an outcropping, and he simply refers to the asphaltum exudations, and I am going to dismiss, with your permission, this mineral return, because I think it is a purely false quantity in the case. I think this has probably led to all the trouble.

Secretary FALL. What about his field notes with reference to this township where there are outcroppings?

Mr. SUTRO. The adjoining township?

Secretary FALL. Yes.

Mr. SUTRO. He did not make that survey, but I have examined that note, and the outcroppings are shown throughout by section corners. And under the instructions of the department it was incumbent on the surveyor to note everywhere where he found anything, and this surveyor noted nothing.

Now the next point, I take it, that the Government relies on—that, I assume, it is relying on for the recovery of this section—is the decision of the Supreme Court of the United States in the so-called Elk Hills case, that this was mineral land, known to be such in 1904. I make no point at all about the fact that the decision in the Elk Hills case referred to conditions in 1904, and that we are referring to conditions in 1903. I think the difference of a year there, while it might be in our favor, really is not in our favor. Whatever was true in 1904 was true in 1903. But the decision of the Supreme Court in the Elk Hills case may be accepted by us here as correct law and as a correct finding of fact, which I would be very far from doing except for the purpose of the argument. And my argument before you remains the same.

In other words, for the purpose of this discussion I am going to assume that the Elk Hills case was correctly decided, and that within the meaning of the case then before the court this was known mineral land.

81 Now it appears from the record in that case, and was stated by Mr. Mills, the Government counsel, as well as by Judge Biggs, who afterwards appeared in the case, that the issue in that case was the belief of the railroads. I would like to read you just a sentence or two of what they said. This is what Mr. Mills says in his brief in the Southern Pacific case:

"The question in this case is not whether the land has oil in paying quantities. The question is whether it is mineral land and was so known to the railroad before the land was selected."

And at page 9 of his brief in the Supreme Court he says:

"The ultimate question for decision is whether the railroad company believed, contrary to its affidavits, that the lands were valuable for oil at the time of the proceedings which resulted in patents."

Now that was the issue in that case. It was perfectly true that the Supreme Court went on and said that the land was known mineral in 1904, but you can not read that decision in any other light than it was known to the railroad that it was mineral land. And as a matter of fact the record in that case showed that the railroad had reports from its own geologist that this was mineral land.

Now the condition of this land in 1904 with reference to other developments is illustrated on a map which you were good enough to let me show you before, and I would like to call it to your attention again. This is a condensation of those two large maps, which are originals, contemporaneous maps. It shows no develop-

82 ment whatever in this township. It shows no development within two miles to the west of the township, which would be

ten miles away from this section. It shows no development in the entire township south of this township, or north or east or cornering. Now to say that in 1903, with this state of development, with not a thing discovered in this township or around it, we could have asserted that this was a mineral section is simply absurd.

The department in 1904 classified this as nonmineral, and to assume, for a moment, that I was standing here before you now, Mr. Secretary, urging you to permit us to exchange this section, which was desert land, so far as any one knew, for a fertile section some other place in lieu thereof, wouldn't you have said to me, "Mr. Sutro, the State must prove that this was a mineral section, and you can not prove it by the guesses of geologists. Whatever the railroad may have believed, and whatever the Southern Pacific may have tried to put over on the Government, the fact is that this is not a mineral section, and you know it," and I would have had very little answer to that proposition.

Now in 1903, which is the governing date here, the regulations of the department were quite sharp and clear that in order to surrender a section as mineral and take in lieu thereof other lands a State would have to prove the discovery of mineral on the section.

Now that may not be good law; it may not have been a sound rule. The rule, I think, has been practically overturned. But it was the rule in 1903, and if the State could not surrender this section in 1903 as a mineral section it certainly was entitled to keep it as a nonmineral section. It had to be one or the other.

Now I am going to read to you, Mr. Secretary, just one of innumerable decisions on that subject.

83 First, the regulations. This was the regulation under which this section would have been turned in as mineral——

First Assistant Secretary of the Interior FINNEY. Have you the date of the regulation?

Mr. SUTRO. March 6, 1903. And you pointed out to me one day, Mr. Secretary, that that was subsequent to the approval of this plat, but the plat was not filed in California until April, and the State could not have tendered this section until the plat was filed, because it would not know that it was surveyed. The fact is, in other words, that this survey having been made—I will assume now in February—this regulation coming down in March, the survey being filed in April, the State could not have tendered the section before April, and when it tendered it, it would be tendering it under this regulation and this was the regulation:

"RULE 2. The State will not be permitted to make selection in lieu of land within a school section alleged to be mineral in character and for that reason excepted from its grant whether returned by the Surveyor General as mineral or otherwise in the absence of satisfactory proof that the bare land was known to be chiefly valuable for mineral at the date when the State's right thereto would have attached if at all. The proof must show the kind of mineral discovered upon the land and the extent thereof, when and by whom the discoveries were made," &c., &c. "If in any case the proof does not clearly show that the bare land was known to contain valuable mineral deposits and to be chiefly valuable on account of such

84 deposits at the date the State's right would have attached thereto a selection in lieu thereof will not be permitted."

It was a very reasonable rule, Mr. Secretary. For in many cases the State had turned over good land in lieu of poor land on an allegation that the poor land was mineral. And they have gotten by in a good many cases. There was one very notorious gentleman in California that did that.

And furthermore, it is my confident belief that the true doctrine about school sections in place was that unless somebody had a mine on the section the title to the section vested in the State. That was the purpose of the original decision, in which it was held that mineral lands were excepted from school-land grants. It was to protect mining occupants, and the department naturally held and naturally made the regulation that I have just read.

Now, there are a number of other land decisions to the same effect, and I would like to read one, and I read it because it was quoted with approval by the Supreme Court of the United States.

"The mineral claimant * * * must show, not that neighboring or adjoining lands are mineral in character, or that that in dispute may hereafter by possibility develop minerals in such quantity as will establish its mineral rather than its agricultural character, but that, as a present fact, it is mineral in character;"—he is talking about sections in place—"and this must appear from actual production of mineral, and not from any theory that it may produce it; * * * nor is it sufficient that the mineral claimant shows that the land is of little agricultural value. He must show affirma-
85 tively, in order to establish his claim, that the mineral value of the land is greater than its agricultural value."

And that was repeated a great number of times by the department. In other words, you must have shown at that date the actual production of mineral from the land, or the section could not have been surrendered as a mineral section, and I say that if it could not be surrendered as a mineral section then the title passed to the State as a nonmineral section.

Secretary FALL. Your theory is practically, roughly stated, that the United States can not gamble on its chances.

Mr. SUTRO. No, sir.

Secretary FALL. That if it would not have classified this land at that time on application for new land, as mineral, that it can not hold it an indefinite length of time, and then when mineral is discovered some distance below the surface of the land claim that it belongs to it rather than to the State.

Mr. SUTRO. That is it precisely. I do not think such a principle would commend itself to any Secretary's office.

Mr. FINNEY. But your theory is not the theory that is now in vogue in the decisions of the department of the Supreme Court.

Mr. SUTRO. No, sir.

Mr. FINNEY. So I take it that you are addressing your remarks to this particular time.

Mr. SUTRO. Precisely, Mr. Secretary.

In 1905 Mr. Hitchcock had his attention directed to the fact that this theory about which I am speaking now had led to the acquisition of coal lands in Colorado. You are
86 very familiar with that situation, Mr. Secretary. And Secretary Hitchcock practically recognizing that this had been the

rule, criticized it rather sharply, and drew to his support decisions of the Supreme Court of the United States which he interpreted as supporting the broader rule. And I think it may well be said that after 1905 the rule which I say was the rule—and I have collected here a great many decisions, all of which you will find, Mr. Secretary, antedate 1905—after 1905, I think, the rule was more nearly that of the Diamond Coal and Coke case, approved in the Elk Hills case, that you might look to the surrounding conditions.

Now, there is another circumstance about this case, it seems to me, that ought to be controlling in any American government. A couple of years before this survey was made there was a contest on this section 21 in the adjoining township. There was a mineral claim as against the railroad grant, and this department held that those portions of the section on which minerals had been produced in paying quantities, oil, would go to the mineral claimant, but those portions of the section upon which oil had not been produced should go to the railroad, and that despite the fact that those upon which oil had not been produced contained deposits of asphaltum and other evidences of oil. And they made that ruling because they said that unless the mineral is produced in paying quantities we will not classify the land as mineral.

Mr. FINNEY. Is that the Tulare case?

Mr. SUTRO. Tulare Oil & Mining Company vs. Southern Pacific, in the 29 Land Decisions.

Now, are you going to say, Mr. Secretary, sitting as you do now and projecting yourself back to 1904, that this section ten miles away from any discovery was a mineral section, and that we
87 should have known it, that we should not have bought it and spent our money there, when your predecessor in office decided that in the next township to this township only part of the section was mineral, and that the part that produced minerals? If there was such a thing as protection in title, we are certainly entitled to believe when we bought the section in 1910 that the decision in the adjoining township was a controlling precedent.

Now, the rule I have contended for is a rule of property and the Supreme Court of the United States at this very term has spoken about Land Office decisions becoming rules of property. I am referring now to the Wyoming case.

And without boring you to read quotations, the same thing was said in Daniels vs. Wagner, which was also a very well-known case, to wit:

"That long-standing rules of the department, upon which people act in good faith, become rules of property and can not be willfully and idly overturned."

Now, so much for this question as to whether or not this section, in the absence of discovery of mineral, could be considered a mineral section. I think it could not.

The other point upon which we rely is to my mind quite conclusive, and that is that in 1904 this department classified this section as nonmineral. Now, I am quite familiar with the fact that that was based on a report, that classification made by Mr. Ryan, and that that report has been criticized by the Supreme Court of the United

States itself as a superficial report. That was a very fatal circumstance to the railroad. The railroad knew a great deal more about this land than Ryan, and it knew altogether too much according to the record, about Ryan and Ryan's report before it was made.

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But we were not in position, when the land was classified in 1904—and we bought it in 1908—we were not in position to come to Washington and say to the Secretary, "On what authority did you make this classification? On what information did you base your findings? On whose report did you act? Was he crooked or was he straight?" All we knew was that the department had classified this land, and we could not go behind that classification if we had wanted to.

Secretary FALL. When did you drill this land?

Mr. SUTRO. In 1919. We did not think it was oil land, or we would have drilled it sooner. And that classification, whether made on a mistake or whether induced by a fraud, or how it was made, was a binding classification. And it leads to this result. The school land act of 1853, like all other school-land grants contained no provision for patent. It is one of the few kinds of cases in which Congress made a grant without any provision for patent. Now, if there is to be such a thing as certainty in titles, the rule which the Supreme Court has repeatedly adhered to, that in the absence of a provision for patent the authorized action of the department is the equivalent to a patent—and they have said "there is no magic in the word 'patent'"—then this classification for the purposes of these two school sections was the equivalent of a patent. We had the act granting these sections to the State. We had the finding by the department that they were nonmineral. There was nothing more that we could ask for if we had wanted to. We could not have gotten it.

If I had come here, Mr. Secretary, and you were here then in office, and I had said to you, "We want something more to show our title; we would like something more to show our title," you would say, "What more do you want? You have got the act of Congress granting you the land if it is nonmineral, and you have got our statement that it is nonmineral. What more do you want?" And there would not have been anything more that I could ask for.

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I just want to read you one quotation from the Supreme Court, and then I am through, Mr. Secretary. This is what has been quoted with approval. It was said by a judge in California, who, we think, was a very eminent man, Judge Sawyer, and this was quoted by the Supreme Court of the United States with approval:

"There must be some point of time when the character of the land must be finally determined, and for the interest of all concerned there can be no better point to determine this question than at the time of the issuance of the patent."

And in the Barden case the Supreme Court of the United States said:

"It is conceded to be of the utmost importance to the prosperity of the country that titles to land and to minerals in them shall be settled and not be subject to constant and ever-recurring disputes

and litigation, to the disturbance of the individuals and the annoyance of the public."

And I submit that in this case, where there is no fraud, no possible allegation of fraud, where the State, five years after the classification of this land, sold it in good faith to people who bought it in good faith, and who held it for 10 years, and who have now invested some millions of dollars in the land, that the time has passed when the United States can assert its title thereto,
90 and that the United States is estopped by the judgment of this department that this was nonmineral land in 1904, and by its own regulations, which defined it as nonmineral land in 1903.

Now if you will ask me what it is I am asking you to do, I will say it is this: I am asking the department to close this case on the ground that the title is in the State, and there is nothing further to investigate.

I hope I have not kept you too long, Mr. Secretary.

Secretary FALL. What you are asking now is that if convinced that the rule is as you state it, that instead of allowing this case to go to a hearing, and then in event I would hold with you, so deciding at that time, that if I am with you that I should decide it at this time and prevent the delay in the trial?

Mr. SUTRO. Yes, sir; because a delay here is a taking of property. I mean by that that we are now under bond, so to speak, to the department, and we are faithfully observing it, of course, not to use this property, except so far as to protect it. I have given the Assistant Secretary, Mr. Finney, my assurances about that, and that is to be confirmed in writing. That means that for two or three years we can not deal with this property. It not only means that; it means that in the meantime the proceeds must be impounded.

Secretary FALL. When was this contest directed?

Mr. SUTRO. 1914.

Mr. FINNEY. Originally in 1914, Mr. Secretary; ordered by the Land Office.

Secretary FALL. What was the cause of the delay?

Mr. FINNEY. I can not explain that. The order went to California, to the legal officers.

91 Mr. SUTRO. I think Mr. Hamel can answer that question for you, sir.

Secretary FALL. Can you answer it, Mr. Hamel?

Mr. HAMEL. I can tell you what I know about it; that is all. I knew nothing about the direction of this proceedings until approximately the 1st of February or the latter part of January of this year. I was away from the office one day, and the chief of the field division called me up and asked me to come down. I went down, and he showed me the folders relating to these two sections and asked me to look at the papers. I looked at them and saw that they were charges directed against these two school sections, dated January, 1914, and I threw up my hands. I did not know what to say. I asked him where in Heaven's name these things had been, where he found them. He said that he had found them in his closed files. And I asked him if he knew how they got there and he said "No," he did not. I asked him if I might take the papers and look them over and see what the situation was. He said "Yes," and he

said that he would write the commissioner immediately. He asked me to drop in and see the commissioner when I was here and tell him about it, which I did, and the commissioner at that time discussed the thing with me, went over some of the evidence and matters that were in the record, and suggested that he was going to take it up with Judge Finney and others over here, and that is all I know about it.

Mr. FINNEY. Of course at that time the fact that oil was on the land was known?

Mr. HAMEL. Oh, yes, sir; yes, sir.

Mr. SUTRO. Isn't it a fact, Mr. Hamel, that the reason that proceeding lay dormant was that the former chief of field division, Mr. Helm, had been instructed, to use a homely phrase, "to lay off"; that there was nothing in it?

92 Mr. HAMEL. I have no knowledge of that.

Mr. SUTRO. Aren't you familiar with it?

Mr. HAMEL. No; I am not familiar with it.

Mr. SUTRO. My information is that the proceedings did not come forward because the department had no faith in it. That is what I have been told.

Mr. HAMEL. You have some knowledge that I have no knowledge of. I have no knowledge of this situation at all. I might just say this: I have been more or less intimately connected with this situation in California since 1914, and one of the very first things I did was to examine some cases in a township right near. I don't know how it happened at the present time, but I found that the survey of that section was made way back in 1850 or 1860, way back. It did not occur to me at that time that there was any other township in this region that might have been surveyed at a later date. I assume that they were all surveyed later. The Elk Hills case at that time had been started in the courts, and a number of us that were in this oil work at that time had nothing to do with that case, and there were other men handling it, and our attention was never directed to that township for the reason that at that time there was no development in the Elk Hills. Well, it just never occurred to me, and, as I say, I just threw up my hands when I learned of this situation in January, 1914, and could not realize how it had happened.

Mr. Heyworth, the former chief of field division, who has now passed on, was ill for many years. It may have been that it got into the closed files in a careless manner.

Mr. SUTRO. Well, it was Mr. Helm, who was the chief of field division, who told me that the department had had no faith in the proceeding.

93 Secretary FALL. Of course, that is all right.

Mr. SUTRO. That does not affect the merits.

Mr. HAMEL. It was never under the jurisdiction of Mr. Helm; it was under Mr. Heyworth's jurisdiction.

Secretary FALL. That would be immaterial anyhow.

Mr. SUTRO. That would be immaterial.

Secretary FALL. That would be immaterial so far as I am concerned. But it was a matter of curiosity how the case was brought in 1914, and oil was discovered thereafter, and the case was allowed to run along and no interest was taken in it, and it was brought up

again after the oil had been discovered in 1919, two years afterwards, and the case was reinstated.

Mr. SUTRO. I think it is proper, however, to direct your attention, Mr. Secretary, to the fact that no stone was left unturned—and I do not say that in any spirit of criticism—that no stone was left unturned by the Department of the Navy to protect its rights on these reserves. They were very aggressive, as you know, and very properly so, and it might be a fair inference that there was some reason of the kind that I suggest, regardless of what people may have said, that for seven years this section was left to lie as it was—I mean that there wasn't another piece of land in reserve 1 or 2 that the Navy did not go after that they had a chance to go after.

Mr. FINNEY. Most of the surveys in the vicinity, Mr. Secretary, were made back in the fifties. All the valley lands and the level lands were surveyed at that time. Most of us, even I, myself, rested under the impression that those lands had been surveyed in the fifties. The old plats show them as unsurveyed mountainous lands.

Mr. SUTRO. I showed you the other day he never sur-
94 veyed a hill.

Mr. FINNEY. And most of us rested under that impression, that the title had passed to the State of California in the fifties.

Secretary FALL. Well, you were resting under that impression; you don't mean that you were resting under that impression after the suit was brought in the Supreme Court, tried in the Supreme Court?

Mr. FINNEY. Well, that did not necessarily involve this, because there the controlling condition was the known condition of the land at the date of the railroad patent, which had issued, I think, in 1904 or 1905. It was whether it was then mineral land or not that controlled the vacation of the railroad patent.

Mr. SUTRO. Yes; more particularly whether it was known to the railroad.

Secretary FALL. Let me ask you a question now: What is the theory of the Government in a case like this? I called your attention to it a few days ago when Mr. Sutro was here, Judge. In the first place, in 1898, certain school lands, 16 and 36, in the States of Arizona and New Mexico, were donated to those States for certain purposes. The States came into the Union in 1911, and in the enabling act they had certain other donations, as was the custom formerly.

Mr. FINNEY. Two additional sections.

Secretary FALL. Two additional sections, but they had prior thereto, in 1898, had this donation of 16 and 36. Could the State of New Mexico lease either 16 or 36, either of those donations, at the present time, for oil and make a valid lease on them?

Mr. FINNEY. Yes; the rule is, as I understand—the present
95 rule is that if the lands were known to be mineral—take the 1898 grant first; if they were known to be mineral——

Secretary FALL. Known to whom?

Mr. FINNEY. Known to anyone, the general public, anyone that went on the section—known to be mineral in 1898, if surveyed at that time, that they did not pass to the State; that the State simply had the right of lieu selection. If they were surveyed subsequently, and known to be mineral at the time of survey, and it did not pass to the State——

Secretary FALL. But known to whom to be mineral? Isn't there any rule as to who shall have knowledge of it?

Mr. FINNEY. Anyone who sees the land. It must not necessarily be the Government agent, or John Smith or Tom Jones. For instance, in the case of an outcropping that is visible to anyone who passes by—that would be known as mineral land under our rule. Under the rule which Secretary Hitchcock has approved, and which, I think, has been sustained since by the Supreme Court, geological indications, discoveries, and developments upon adjacent land may be taken into consideration and may be such knowledge.

Secretary FALL. Yes; as to classification.

Mr. FINNEY. Now, Mr. Secretary: if that condition did not exist in 1898, and the school section in New Mexico was surveyed at that time——

Secretary FALL (interposing). But the geological situation has not changed since 1898. It is the same now as it was then, I assume. I was there in 1898, and the geological conditions have not changed, I assume.

Mr. FINNEY. Well, there is a lot of mineral that is not disclosed on the surface.

Secretary FALL. Then according to that theory you would
96 never get a title to the lands. That is what I am trying to get at.

Mr. FINNEY. Well, there may be a defect in the school grants.

Secretary FALL. Then the Government of the United States had better get to work and classify these lands.

Mr. FINNEY. I think myself it is a good thing, and there is a bill pending which would require that very thing.

Secretary FALL. The Geological Survey can do it without any legislation, except the appropriation.

Mr. FINNEY. Well, the thought of this bill is that there should be a determination by the Secretary, and the patents or evidence of title issued. It is very true, as you say, that it does leave the mass of State titles in an uncertain condition, because they may be lying out there, and they may have been there for ten, twenty, or thirty years.

Secretary FALL. Is Mr. Sutro's statement of the case practically admitted?

Mr. FINNEY. I think that is substantially the case.

Secretary FALL. The contest will be dismissed.

(Which were all of the proceedings had in the above-entitled hearing at this time.)

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EXHIBIT 3

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE
Washington, D. C., December 18, 1909.

Ex parte State of California. Canceling list 792 and allowing amendment of list 622

REGISTER and RECEIVER,
Redding, California.

SIRS: On July 29, 1902, the State of California filed in your office indemnity school-land selection list R. & R. No. 622 (State No.

3782) for all of sec. 6, T. 44 N., R. 3 E., M. D. M., 639.17 acres, on the base of certain portions of sec. 36, T. 2 S., R. 5 E., S. B. M., alleged to be mineral land.

On March 7, 1903, there was a similar list filed in your office, bearing the same State number for the same land on the base of an equal area of described land in sec. 36, T. 30 S., R. 23 E., M. D. M., also alleged to be mineral land (R. & R. 792).

With your letter of November 20, 1905, you transmitted to this office an application to amend said list 792 by the substitution of the SE. ¼, W. ½ of NE. ¼, SE. ¼ of NE. ¼, and part of the NE. ¼ of NE. ¼ of sec. 16, T. 10 N., R. 5 E., B. H. M., within the Klamath National Forest, created May 6, 1905, as base therefor. This application to amend is supported by the requisite nonmineral affidavit and certificate of nonsale and nonencumbrance of the base lands by the State. The land applied for was temporarily
98 withdrawn by the department on October 25, 1907, for a proposed addition to the Shasta National Forest, and embraced within the boundaries of said forest by proclamation, dated March 2, 1909, which excepted from its force and effect all lands which were at its date legally appropriated under the public land laws and which was restricted so as not to interfere with or defeat legal rights under such appropriation so long as the appropriation was legally maintained.

Said list 622 was filed July 29, 1902, and was of record at the date of said temporary withdrawal and proclamation. The land applied for thereunder was therefore legally appropriated when the withdrawal was made and was excepted from the force and effect of the proclamation.

The land applied for was covered by an existing selection on March 7, 1903, at the date on which said list 792 was presented and allowed. Your action in allowing this list was erroneous, and the same, which is in substance an application to amend said list 622 by the substitution of new base, is canceled (29 L. D. 29). You will so note upon your records.

The application to amend said list 792 is treated as an application to amend said list 622 by the substitution of new base therefor, as indicated above, and this application being complete, the same is hereby allowed. Said list 622 has accordingly this day been canceled as to the original base tracts, and those designated in said application transmitted November 20, 1905, have been substituted therefor.

You will so note upon your records and advise the proper State officer.

Two copies are inclosed herewith for service.

Very respectfully,

(Signed) FRED DENNETT, *Commissioner.*

A. A. H.
A. B. C.

99 ***Opinion***

Filed November 23, 1925

* * * * * * *

The bill is filed for the purpose of obtaining an injunction enjoining the defendant, the Secretary of the Interior, from continuing

proceedings in the Department of the Interior instituted by the department to determine the mineral character of certain lands in the State of California, the title to part of which is claimed by the plaintiff, and in the other part of which plaintiff claims an interest under a person claiming title.

The matter is now before the court upon a motion for a preliminary injunction.

The charges upon which the hearing in question was ordered are: "(1) That the land is mineral in character, containing valuable deposits of petroleum and natural gas; (2) that the land was known to be mineral in character at and prior to the acceptance of the plat by the General Land Office January 26, 1903," "the plat" being the plat of a survey.

It is admitted that the lands in question are mineral in character, containing valuable deposits of petroleum and natural gas, but not that they were known to be mineral on January 26, 1903.

At the outset it is well to note certain matters admitted by one side or the other of the controversy.

100 It is claimed by the defendant and admitted by the plaintiff that the court is without jurisdiction to determine whether or not the lands in question were known to be mineral on January 26, 1903.

In the defendant's answer it is alleged that the proceedings sought to be enjoined were instituted in pursuance of a joint resolution of Congress of February 21, 1924 (43 Stat. L. 15), directing the Secretary of the Interior to institute proceedings to ascertain and establish title to the United States in the lands in question, but counsel for the defendant concede that the proceeding has not any different status because of that direction than it would have if it were a proceeding instituted under the general authority of the Secretary over public lands.

It is agreed by both parties that the only question for determination is whether or not such steps were taken by the Department of the Interior before the institution of the proceeding which it is sought to enjoin as to establish the fact that the title to the lands in question passed to the State of California under the grant to the State by section 6 of the act of Congress approved March 3, 1853, entitled "An act to provide for the survey of public lands in California, the granting of preemption rights therein, and for other purposes" (10 Stat. L. 244, Ch. CXLV), which act so far as necessary to be considered for the purpose of this case reads:

"That all the public lands in the State of California, whether surveyed or unsurveyed, with the exception of sections sixteen and thirty-six, which shall be and hereby are granted to the State for the purposes of schools in each township, and with the exception of * * * the mineral lands, shall be subject to the preemption laws * * * and shall, after the plats thereof are returned to the office of the register, be offered for sale, after six months' public notice in the State of the time and place of sale, under the laws, rules, and regulations now governing such sales, or such as may be hereafter prescribed * * *."

It is conceded that this act has been conclusively interpreted not to be a grant of lands known to be mineral in character.

101 A survey of part of the lands conveyed by the school grant to the State of California above referred to was made and a plat thereof filed and approved by the Commissioner of the General Land Office in 1856, but it is not claimed that the disposition of the present matter turns in any way upon a consideration of these facts.

The bill sets forth that an application to the State of California by one Alice Miller for a certificate of purchase of the lands in question was made and that she made upon such application an initial payment, but that later the State sold all of the right, title, and interest of said Miller for delinquent taxes and purchased at the sale, taking the tax deed to itself and filing it in the office of the surveyor general of California. It is not claimed that the State got any better title to the lands in question by this transaction than it had under the granting act of 1853, above cited.

The motion for an injunction was heard on the bill and answer, which show the following facts. The lands in question are in a "thirty-six" section.

On February 28, 1900, the General Land Office "suspended from disposition" the said section 36 by an order which stated, however, that the suspension did not include mineral lands. On July 19, 1900, the suspension was continued for a reasonable time, pending an inquiry as to the true nature of the lands then in progress. In the years 1901 and 1902 a survey was made of the section and a plat of the survey filed and duly accepted and approved on January 26, 1903, by the Commissioner of the General Land Office. On May 16, 1903, the plat was filed in the local land office in California. The lands were returned by the surveyor as mineral, and the plat showing that fact has at all times been on file in the office of the Secretary of the Interior. It is alleged in the answer that the field notes

102 of the official surveyor also showed that said section 36 was mineral in character and that such notes were also filed in the office of the surveyor general. In argument this was denied by counsel for the plaintiff, and it was conceded by counsel for the defendant that such notes did not show that the lands were mineral. Plaintiff claims that the title to the lands vested in the State of California as of the date of the approval of the plat. If the case rested at this point, it would be necessary to hold that any conveyance by the State of California after the date of the suspension above mentioned passed no title, for in the absence of other evidence as to mineral character than what was shown by the notations on the plat it is not apparent why the notations should be ignored. (See Borden vs. Northern Pacific Railroad, 154 U. S. 288, 320.) However that may be, there was further action by the Land Office, for on December 10, 1903, a special agent of the General Land Office was directed to make a report based upon his examination theretofore made and on his knowledge of the lands in question and familiarity with the country generally and to state whether there was in his opinion any necessity for a continuance of the suspension. This agent under date of March 24, 1904, made a report to the Commissioner of the General Land Office upon the township in which the lands are located, as follows: "No wells have been bored for

oil, and, in my opinion, all of the lands in the township should be relieved from further suspension," and on April 5, 1904, the Acting Commissioner of the General Land Office in a letter to the register and receiver in California referring to the previous directions for an examination, wrote:

"I am now in receipt of the agent's report to the effect that certain of the lands so suspended are being developed for their deposits of mineral, and that numerous oil wells have been sunk which have proved to be good producers of mineral. Other townships and portions of townships have not been developed at all,
103 for wells that have been sunk have proved to be barren. The lands upon which he states active mineral development is in progress will be allowed to continue suspended, but as to the following tracts, where no mineral has been discovered, it is believed that no good reason exists for further suspension.

"Accordingly the lands hereinafter described are hereby relieved from suspension."

Among the lands directed to be relieved from suspension were all of those in said township, and the register and receiver was by such letter directed to make a proper notation upon the records of his office. On January 24, 1908, the register and receiver certified to the State surveyor general, referring to the lands in question, as follows:

"This is to certify that I have examined the files, plats, and records of this office in relation to all of sec. 36, Tp. 30 S., R. 23 E., Mount Diablo meridian, and find that there is not any homestead, preemption, or other valid claim to any portion of said lands on file or record in this office adverse to that of the State of California, and that the plat thereof has been filed in this office more than 90 days, viz, since May 16, 1903, and was approved by the United States Surveyor General on the 1st day of August, 1902."

On August 24, 1908, one Hay applied to the State of California to purchase part of the lands in question. On the same day one Buffington made a similar application for the other part of such lands. Each applicant made his initial payment. On August 25 of that year Hay and Buffington redeemed the lands from the sale to Miller above mentioned. On January 5, 1909, certificates were issued by the State to these applicants evidencing their respective rights to purchase the lands applied for upon completion of payments therefor as required by law. On August 21, 1909, said Buffington made an agreement with one Carman for the portion so applied for by Buffington, and on January 20, 1910, the State issued to Buffington its patent for the lands. Buffington deeded the lands so patented to Carman. Carman, on May 25, 1919, together with a grantee from him of a one-half interest, entered into a
104 contract with the plaintiff for the development of the lands so obtained from the State. Hay completed his purchase by payment of the purchase price in full, and on November 29, 1909, an agent of the plaintiff purchased Hay's interest for a valuable consideration. On January 31, 1910, the State of California issued its patent to such agent, who thereupon deeded said land to the plaintiff.

On March 7, 1903, the State of California offered the lands in question as a mineral base for a lieu selection. On August 15, 1905, the State sought to amend this lieu land offer by offering another base. On December 18, 1909, the department cancelled the lieu selection on the base of the lands in question because of a conflict therein with previous indemnity land selections submitted by the State.

On September 14, 1908, the land was withdrawn from agricultural settlement and on June 4, 1909, it was classified as oil land. On June 7, 1909, the classification of the land as oil land was approved by the Secretary and on September 27, 1909, by department order the land was withdrawn from mineral entry.

On January 14, 1914, the register and receiver at Visalia, California, was instructed by a letter from the Commissioner of the General Land Office to institute adverse proceedings with reference to the lands in question on the ground of known mineral character of the lands on December 20, 1901. No notice of these proceedings was given to the parties in interest. On October 12, 1917, the Commissioner of the General Land Office asked for a list of contests pending in respect to public lands in California and on November 26, 1917, the land office at Visalia replied by letter to the Commissioner of the General Land Office calling attention to the pendency of these charges as to the mineral
105 character of the lands in question. On March 2, 1921, the Commissioner of the General Land Office directed the chief of the field division in California by letter to advise the register and receiver at Visalia of the names of the parties in interest and to prosecute the proceedings against them but in view of a decision of the Supreme Court directed that the inquiry as to known mineral quality should be as of January, 1903, instead of December, 1920. The action on these proceedings will be referred to later herein.

It is claimed by plaintiff that upon said removal of the suspension and such determination of their nonmineral character in 1904, the title of the State of California to the lands "was finally determined and settled."

The questions involved are made difficult of solution by reason of the fact that Congress has not provided for a patent to the State of lands mentioned in the statutory grant nor for a certification of a list of selections by the State. The State can not insist on having a patent. (Shaw vs. Kellogg, 170 U. S. 312.) Was the State's title established before the institution of the proceedings sought to be enjoined? is the question. If it was, there could hardly be a contention that the injunction should not be granted. (Noble vs. Union River Logging Co., 147 U. S. 165; Lane vs. Watts, 234 U. S. 525, 235 U. S. 13, 41 App. D. C. 139.)

No case in a court of the United States has been cited by counsel nor has any been found by the court passing directly upon the effect if the approval by the Land Office of the plat of a survey of a school land section as establishing finally the title in the State to the lands not shown on the plat to be mineral and so precluding any
106 further departmental action; nor is there any decision determining whether such finality results from a finding that the lands are not mineral based on a special examination such as that

made after such approval of the plat by an agent of the Land Office referred to above. Of the decisions cited by the plaintiff those most nearly similar to the present case involve the so-called Baca grant, of which decisions the first was Shaw vs. Kellogg, supra. That case was as follows: A dispute existing between the heirs of one Baca and the town of Las Vegas to certain lands in the Territory of New Mexico, being public lands, Congress in 1860, after an investigation and report by the surveyor general of New Mexico, passed an act (12 Stat. L. 71), section 6 of which is as follows:

"SEC. 6. And be it further enacted, That it shall be lawful for the *heirs* of Luis Maria Baca, who make claim to the said tract of land as is claimed by the town of Las Vegas to select, instead of the land claimed by them, an equal quantity of vacant land, not mineral, in the Territory of New Mexico, to be located by them in square bodies, not exceeding five in number. And it shall be the duty of the surveyor general of New Mexico to make survey and location of the lands so selected by said heirs of Baca, when thereunto required by them: Provided, however, That the right hereby granted to said heirs of Baca shall continue in force during three years from the passage of this act, and no longer."

The facts in the case are summed up in the opinion at page 342 as follows:

"Summing up the whole matter it results in this: Congress in 1860 made a grant of a certain number of acres, authorized the grantees to select the land within three years anywhere in the Territory of New Mexico, and directed the surveyor general of that territory to make survey and location of the land selected, thus casting upon that officer the primary duty of deciding whether the land selected was such as the grantees might select. They selected this tract. Obeying the statute and the instructions issued by the Land Department, that officer approved the selection and made survey and location. The Land Department, at first suspending action, finally directed him to close up the matter, to approve the field notes, survey and plat, and notified the parties through him that such
107 field notes, survey and plat, together with the act of Congress, should constitute the evidence of title. All was done as directed. Congress made no provision for a patent and the Land Department refused to issue one. All having been done that was prescribed by statute, the title passed. The Land Department has repeatedly ruled that the action then taken was a finality. It has noted on all maps and in its reports that this tract had been segregated from the public domain and become private property. It made report of this to Congress, and that body has never questioned the validity of its action. The grantees entered into actual possession and fenced the entire tract. They have paid the taxes levied by the State upon it as private property, amounting to at least $66,000."

The action was in ejectment. The plaintiff and those under whom he claimed had been in possession since 1869. No question as to their title had been raised until 1887 when defendants took possession and disputed the plaintiffs' claim. The court said:

"We are of opinion that at this late day the title to the locators and their grantees is not subject to challenge, and that it is a full, absolute, and unconditional title."

The court said further at page 337:

"There was no reservation of the matter for further consideration in the land department or by the surveyor general. There was a finality so far as they were concerned."

This quotation from the opinion in Shaw vs. Kellogg has been made to demonstrate the marked difference between that case and this, a difference as great as between the present case and Lane vs. Watts, supra, in which an injunction was granted against the Secretary of the Interior because he was about to approve an entry on lands included in a tract selected by the Baca heirs under the act of 1860 above quoted, not the same selection as that involved in Shaw vs. Kellogg. As the court says in the opinion in Lane vs. Watts, 234 U. S. 525, 541:

"To accommodate conflicting claims and at the instance of the Government the Baca claimants gave up their rights to a definite tract of land, * * *"

and this points out a vital distinction between that case and the one under consideration.

108 The case of Saunders vs. La Purisima, etc., Co. (125 Calif. 159) more nearly resembles the present case than any others cited for the plaintiff, but the differences are such as to make a distinction necessary. In the Saunders case the plaintiff's predecessors in title had obtained in 1890 a patent from the State—seven years before the defendant corporation claimed the right to make a mineral entry. The General Land Office long before the patent issued to the State in 1890 had found (in 1871) the land to be nonmineral and had thereafter so far as the report shows made no contention to the contrary nor had it done anything thereafter indicating that it was still considering the question of mineral quality of the land. The register of the local land office had issued before the patent was granted a certificate similar to the one issued in the present case. On these facts the court held that the patent was not open to collateral attack by the defendant. What the decision would have been had the General Land Office acted from time to time as it did in the present case cannot be said, but at least the reasoning of the court would have had to follow a different line in order to uphold the plaintiff's title. As to the effect to be given the certificate of the register see Cosmos Co. vs. Gray Eagle Co. (190 U. S. 301, 313).

The court is of the opinion that inquiry into the known mineral character of the land was not foreclosed by the action of the Land Office in relieving the lands from the order of suspension in 1904 upon the report of the special agent. If it were otherwise, then even though it had become known the next day that the land was mineral and that the report was deliberately false the department would have been helpless to act. (In this connection see what was said in United States vs. Southern Pacific Co. 251 U. S. 1, 14, about the very report upon which the General Land Office acted in the

109 present matter in removing the suspension.) If an administrative finding had the effect to close the matter then the approval of the plat with the notation of the mineral character of the lands established conclusively that no title vested in the State. The defendant does not make that contention but claims that the question of the known mineral character of the lands was still an open one and

the admitted facts show that the department has so considered it to be at least up to a hearing had in 1921 before Secretary Fall in relation to the proceedings instituted in 1914. Unless the decision on that hearing finally determined that the land was known in 1903 to be mineral an injunction should not be granted. What, if any, was the effect of that decision?

At the hearing in 1921, which was before Secretary Fall, counsel for the Standard Oil Company stated that he was asking the department to determine that section 36 "is a school section in place, title to which is vested in the State and that the title has been so vested since the approval of the survey in 1903." After a statement of considerable length by counsel setting forth many if not all of the facts of record in the department, some of which are mentioned above, and also stating facts not of record about some of which no one else of those present should be presumed to know, which statement was also an argument on the law, the following occurred:

"Mr. SUTRO. * * * Now if you will ask me what it is I am asking you to do, I will say it is this: I am asking the department to close this case on the ground that the title is in the State, and there is nothing further to investigate * * *.

"Secretary FALL. What you are asking now is that if convinced that the rule is as you state it, that instead of allowing this case to go to a hearing, and then in event I would hold with you, so deciding at that time, that if I am with you that I should decide it at this time and prevent the delay in the trial?"

110 After some discussion as to the reason for the delay in the proceedings instituted in February, 1914, the following occurred:

"Secretary FALL. Let me ask you a question now: What is the theory of the Government in a case like this? I called your attention to it a few days ago when Mr. Sutro was here, Judge. In the first place, in 1898 certain school lands, 16 and 36, in the States of Arizona and New Mexico, were donated to those States for certain purposes. The States came into the Union in 1911, and in the enabling act they had certain other donations, as was the custom formerly.

"Mr. FINNEY. Two additional sections.

"Secretary FALL. Two additional sections, but they had prior thereto, in 1898, had this donation of 16 and 36. Could the State of New Mexico lease either 16 or 36, either of those donations, at the present time, for oil and make a valid lease on them?

"Mr. FINNEY. Yes, the rule is, as I understand—the present rule is that if the lands were known to be mineral—take the 1898 grant first: if they were known to be mineral——

"Secretary FALL. Known to whom?

"Mr. FINNEY. Known to anyone, the general public, anyone that went on the section; known to be mineral in 1898, if surveyed at that time, that they did not pass to the State; they were surveyed subsequently and known to be mineral at the time of survey, and it did not pass to the State——

"Secretary FALL. But known to whom to be mineral? Isn't there any rule as to who shall have knowledge of it?

"Mr. FINNEY. Anyone who sees the land. It must not necessarily be the Government agent, or John Smith or Tom Jones. For instance, in the case of an outcropping that is visible to anyone who passes by, that would be known as mineral land, under our rule. Under the rule which Secretary Hitchcock has approved, and which, I think, has been sustained since by the Supreme Court, geological indications, discoveries, and developments upon adjacent land may be taken into consideration and may be such knowledge.

"Secretary FALL. Yes; as to classification.

"Mr. FINNEY. Now, Mr. Secretary, if that condition did not exist in 1898, and the school section in New Mexico was surveyed at that time——

"Secretary FALL (interposing). But the geological situation has not changed since 1898. It is the same now as it was then, I assume. I was there in 1898, and the geological conditions have not changed, I assume.

"Mr. FINNEY. Well, there is a lot of mineral that is not disclosed on the surface.

"Secretary FALL. Then according to that theory you would never get title to the lands. That is what I am trying to get at.

"Mr. FINNEY. Well, there may be a defect in the school grants.

"Secretary FALL. Then the Government of the United States had better get to work and classify these lands.

111 "Mr. FINNEY. I think myself it is a good thing, and there is a bill pending which would require that very thing.

"Secretary FALL. The Geological Survey can do it without any legislation, except the appropriation.

"Mr. FINNEY. Well, the thought of this bill is that there should be a determination by the Secretary and the patents or evidence of title issued. It is very true, as you say, that it does leave a mass of State titles in an uncertain condition, because they may be lying out there, and they may have been there for ten, twenty, or thirty years.

"Secretary FALL. Is Mr. Sutro's statement of the case practically admitted?

"Mr. FINNEY. I think that is substantially the case.

"Secretary FALL. The contest will be dismissed."

It would make this opinion too long to quote all the argument of counsel. It is enough to say that his argument before the Secretary of the Interior was substantially what it is here, and therefore the inference which the court draws from the foregoing colloquy is that the Secretary ruled as a matter of law that title to the lands in question was finally determined to be in the State of California in January, 1903, when the plat of the survey was approved or in April, 1904, when the lands were relieved from suspension. The Secretary did not determine that the lands were not known in 1903 to be mineral. He said in substance that it was not worth while to waste time to inquire as to that, for even though the evidence taken on the contest might show that the lands were known to be mineral still he could not find so, as the inquiry as to that had been precluded by the department. If the action of Secretary Fall was final, then there never has been and never will be a determination of the contest directed by the department in 1914, notwithstanding that since 1900 the department has from time to time shown that it considered the question to be an open one.

After the contest was so dismissed the Secretary filed no
112 opinion nor did he make any specific findings of fact or conclusions of law, but the First Assistant Secretary of the Interior in a communication to the Commissioner of the General Land Office stated that a hearing had been had on the charges of 1914 and that the Secretary after considering the law and the facts verbally directed the proceedings to be dismissed. The communication instructed the commissioner to dismiss the proceedings and to close the case upon the records. The commissioner instructed the register and receiver in California to close the case on his records.

As the court differs from the finding of Secretary Fall as to the vesting of title in the State of California, it is of the opinion that the Department of the Interior has jurisdiction to prosecute the inquiry as to the known mineral character in 1903 of the lands and that a court may not interfere. (Lane vs. Mickadiet, 241 U. S. 201; Cosmos Co. vs. Gray Eagle Co., 190 U. S. 301. See also Lane vs. Darlington, 249 U. S. 231.)

The motion for a preliminary injunction is denied.

WALTER I. MCCOY, *Chief Justice.*

113 *Petition for reconsideration of certain views expressed in the opinion of the Court filed herein November 23, 1925*

Filed November 27, 1925

* * * * * * *

We respectfully submit to the court the following additional considerations which we earnestly believe lead to the conclusion that the temporary injunction prayed for herein should be granted.

I. We note in the opinion (p. 2)[1] the statement that it is admitted that this "court is without jurisdiction to determine whether or not the lands in question were known to be mineral on January 26, 1903." The question whether the land in 1903 was known mineral land or not is a mixed question of law and fact. It is undisputed that at the time of the final approval of the survey no mineral had been discovered on this section. The Department of the Interior so found in 1904. The chief of field division and First Assistant Secretary of the Interior so advised the Secretary of the Interior in 1921.
114 The pleadings now before the court so state.

Therefore as a matter of law this court should find that the land was nonmineral at the date of the approval of the survey, as it was determined to be by the department in 1904 and by the Secretary of Interior in 1921. No other finding could have been made by the Secretary of Interior in 1921 or should be made by the court now. (Davis *v.* Weibold, 139 U. S. 508, 519, 522, 523, and particularly 5 L. D. 126 and subsequent rulings cited by us.)

The effect of a contrary view would be to permit the Department of the Interior now to try the question whether the land was known mineral or not at the date of the survey despite the fact that heretofore the department has admittedly found the probative fact from which as a matter of law it results that the land was nonmineral and that the grant to the State attached.

[1] P. 100, this print.

There would have been no purpose in the Secretary of Interior ordering a hearing in 1921 on an issue the determination of which was concluded by an undisputed fact, to wit, the absence of exposed mineral. He was justified in accepting the finding of his own office on that subject made in 1904. Satisfied as to the existence of that fact, he properly dismissed a contest which could only subject the parties to an unwarranted burden and interference with the full enjoyment of their property. So this court of equity, we submit, should not permit the Secretary of the Interior to plunge these parties into an investigation of their title and the trial of an involved issue years after the ascertainment of the basic fact upon which the State's title rests. If the allegation that there was no mineral
115 exposed on the land in 1903 were disputed by the Government, an issue of fact would be raised which this court might or might not have jurisdiction to try. But on the admission of that fact now, as it has always been admitted, the legal conclusion that the title vested in the State inevitably follows and this court, if it goes behind the order of the Secretary of Interior made in 1921, is bound to apply the law to that fact and to determine that question. And under Davis vs. Weibold, supra, and the repeated prior decisions of the Department of the Interior and the Supreme Court of the United States on the subject, cited in the briefs, no other conclusion is possible than that the title was settled in the State when the department found, as it still admits, that the land did not possess the attributes of known mineral land as defined in those cases.

The court's opinion intimates (p. 10)[2] that the department would be helpless if within twenty-four hours after the determination of 1904, it should be ascertained that its action had been induced by a false report. It is precisely for such cases that courts of equity are open and administrative action due to fraud, inadvantence or mistake may be corrected in a proper judicial proceeding. But such action is for the judicial branch of the Government, whose orderly administration demands that the jurisdictional acts of a departmental head may not be upset by his successor in office. Furthermore, it is conceded in this case that the fact upon which the department acted in 1904 was correct.

The department in 1904 found there was no mineral exposed on the land and that the land was subject to the laws for the dis-
116 position of the public lands. That is admitted. The act of 1853 was one of those laws. The grant then finally attached. The Secretary of the Interior in 1921 was empowered, if not compelled, to accept or make that finding of fact. It is not now disputed. Under all the decisions—not one has been cited to the contrary—the finding of that fact fixed the title.

II. It is said in the opinion that by reason of the notation on the plat of the survey of the section that the land was mineral "in the absence of other evidence as to mineral character than what was shown by the notations on the plat it is not apparent why the notation should be ignored." Again, "If an administrative finding had the effect to close the matter then the approval of the plat with the notation of the mineral character of the lands established conclusively that no title rested in the State."

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[2] P. 108, this print.

But firstly, the notation of mineral on the plat would not defeat the vesting of the title in the State on the approval of the survey.

State of Utah (32 L. D. 117) is a definite decision on that point. (Copy of the decision is attached.)

Secondly, as the opinion states, it was admitted on the argument that the field notes did not show the land to be mineral and the report of the inspector who examined the land in the years 1900–1904 showed it was not mineral. Indeed, it has always been admitted and is admitted in the present pleadings that no mineral was exposed upon the land before 1919.

As the opinion points out there are no proceedings provided
117 by statute for patenting certification or listing of school lands. The finding of the department in 1904 that there was no mineral exposed on this section, a fact never disputed, and the relief of the section from suspension was the equivalent of the listing of the land to the State. At the date of that finding unless a school section had mineral exposed upon it the land under the regulations of the Department belonged to the State as school land and could not be surrendered as mineral land.

See regulations March 6, 1903 (32 L. D. 39) and regulations Jan. 10, 1906 (34 L. D. 365, sec. 17), which heretofore we omitted to bring to the attention of the court and which reenacted the regulations of March 6, 1903, so far as pertinent here.

As was said by the Supreme Court of the United States, land which could not be patented as mineral would pass as nonmineral land. (Davis vs. Weibold, supra, at p. 523.)

We earnestly submit that the point is controlling.

We particularly call to the court's attention the case of State of Utah (32 L. D. 117), a case many times approved and followed. There it was held that a mineral return by the Surveyor General could not of itself operate to take the lands out of the grant to the State as being mineral lands. It was decided that on the Surveyor General's mineral return the State was not even entitled to a hearing as to the mineral or nonmineral character of the land; that such a hearing could be had only upon proof tendered by the State showing the actual existence of exposed mineral in accordance with the regulations above cited.

State of Utah (32 L. D. 117) and cases following that de-
118 cision make it clear that in the absence of evidence as to mineral character, other than a Surveyor General's return and a mineral notation by the surveyor, the title to a school section passes to the State. Despite the surveyor's mineral return the presumption is that the State takes title. We respectfully submit that the court's views will logically lead to the contrary conclusion from that expressed if the premise with respect to the effect of the surveyor's mineral notation is reversed. Instead of presumptively preventing the title from attaching the mineral notation does not prevent the title from attaching and does not overcome the presumption that the land is nonmineral. It is precisely because there was no evidence of the kind required by the department to overcome that presumption that the title vested, and the surveyor's mineral return did not alter the situation.

The case of In re Utah (32 L. D. 117) is strictly apposite to this case, has been many times followed, and by reason of the date of the decision (May, 1903) is of peculiar interest in this case.

Presumptively the title passed to the State and no proof of any kind was required to be submitted by the State. (State of Utah, 32 L. D. 117; Charles L. Ostenfeldt, 41 L. D. 265; Utah vs. Olson, 47 L. D. 58.)

It is said in the opinion that no case has been cited passing directly upon the effect of the approval by the Land Office of the plat of a survey of a school-land section as establishing finally the title in the State.

We have referred to the case of State of Utah (32 L. D. 117), and we beg to add the following from Wyoming vs. U. S. (255 U. S. 489), where Mr. Justice Van Devanter, speaking for the court, said at p. 500:

119 "The Land Department uniformly has ruled that the States acquire a vested right in all school sections in place which are not otherwise appropriated, and not known to be mineral, at the time they are identified by the survey or at the date of the grant where survey precedes it, regardless of when the matter becomes a subject of inquiry and decision, and that this right is not defeated or affected (p. 501) by a subsequent mineral discovery." (Citing California v. Poley, 4 Copp's L. O. 18; Abraham L. Minor, 9. L. D. 408; Rice v. California, 24 L. D. 14; United States v. Morrison, 240 U. S. 192, 207; United States v. Sweet, 245 U. S. 563, 572.)

III. The transcript of the hearing before the Secretary of Interior in 1921 (if it is competent evidence in view of the letter written by direction of the Secretary stating that "after consideration of the law and facts involved" he ordered the contest dismissed) shows conclusively that he accepted the admitted fact that there was no mineral exposed on the land in 1903 and that he applied the rules of his own department to that fact. (Regulations of 1903 and 1906, supra.) He said: "What you are asking now is that if convinced that the rule is as you state it" (i. e., that under the departmental regulations in force at the time the absence of exposed mineral fixed the nonmineral character of a school section), "that instead of allowing this case to go to a hearing, and then in event I would hold with you, so deciding at that time, that if I am with you that I should decide it at this time and prevent the delay in the trial?" (Answer, Exhibit 2, p. 18.)[2]

That is what the Secretary of the Interior did. He applied the regulations of the department to the fact admitted to be true,
120 and still so admitted. We submit his action exhausted the jurisdiction of the department.

We are now before a chancellor invoking the protection of the equity jurisdiction on the same indisputable and undisputed fact. We ask the court to consider the rule of law upon which we relied and which finds clear expression in Davis vs. Weibold (supra) and the many decisions of the department and its own regulations (supra). If the court is convinced, as it must be, that under those regulations and decisions the absence of known mineral on the land established as

[2] P. 90, this print.

a fact in the department by its finding in 1904, never questioned, since 1904, stamped this land as nonmineral, or if, as we confidently believe, it appears that the jurisdiction of the department over the matter was exhausted, then we ask the court to interpose its equitable power against this attempt at an interference with plaintiff's title. Does not the court believe that if the statute had provided for patent one woul dhave issued in 1904 or in 1921? Or if for listing, that the land would have been listed? Or if for certification, that the land would have been certified? For seventeen years, from 1904 until 1921, no action of which the State or its grantees could know was attempted against this land by the Department of the Interior. If the Government now truly believes that its rights have been invaded by the State and its grantees, the courts of the land are open to the Government, and in our view that was the recourse intended by the Congress of the United States in adopting the joint resolution referred to in the defendant's answer.

It is because of our abiding confidence in the eagerness of this court to do justice that we have ventured now to intrude these
121 observations. For we know that the mind of the chancellor is fully receptive to argument made in good faith and with respect.

Respectfully submitted.

OSCAR SUTRO,
MCKENNEY & FLANNERY,
Attorneys for plaintiff.

PILLSBURY, MADISON & SUTRO,
Of Counsel.

Service of copy of this petition hereby acknowledged this 27th day of Nov., 1925.

H. L. UNDERWOOD, *for Defendant.*

122 STATE OF UTAH (32 L. D. 117)

A grant of lands to a State for school purposes does not carry lands *known* to be chiefly valuable for mineral at the time when the State's right would attach, if at all.

A mineral return by the Surveyor General does not have the effect to establish the character of lands as chiefly valuable for mineral, and cannot of itself operate to take lands out of the grant to the State, as mineral lands. This can only be done by proof clearly showing that the lands were, at the time when the right of the State would have attached, known to contain valuable deposits of mineral, and to be chiefly valuable on account of such deposits.

Acting Secretary Ryan to the Commissioner of the General Land Office:

May 5, 1903

This is an appeal by the State of Utah from your office decision of July 10, 1902, whereby the petition filed by said State, March 25, 1902, asking that a hearing be ordered to determine whether the lands embraced in sec. 2, T. 14 S., R. 6 E., and section 36, T. 12 S., R. 6. E., passed to the State under its school grant made by section

6 of July 16, 1894 (28 Stat. 107–109), or were excepted from said grant because known to contain valuable mineral deposits at the date when the State's right must have attached thereto, if at all, was dismissed.

Utah was admitted into the Union as a State by proclamation of the President, January 4, 1896. (29 Stat. 876.) *The lands in question were surveyed prior to that time, and were returned by the Surveyor General as mineral (coal) lands.*

The petition avers, in substance, that the lands have never been known to contain valuable deposits of coal or other mineral,
123 and that the same was at the date of the State's admission into the Union (the time when its rights thereto must have attached, if at all) of the class and character of lands intended by Congress to pass under its said grant.

The request for a hearing is predicated upon the theory that in the Surveyor General's return the lands can not be regarded or dealt with as having passed to the State so long as such return remains subsisting. The contention by the appeal is upon the same theory.

It is settled law that a grant of school lands to a State does not carry lands known to be chiefly valuable for mineral at the time when the State's right would attach, if at all. *A mere mineral return by the Surveyor General, however, does not have the effect to establish the character of lands as chiefly valuable for mineral, and can not, therefore, in and of itself, operate to take lands out of the grant to the State as mineral lands.* This could only be done by proof clearly showing that the lands were at the time when the right of the State would have attached *known* to contain valuable deposits of mineral and to be chiefly valuable on account of such deposits.

By the circular of instructions issued by your office, with the approval of this department, March 6, 1903 (32 L. D. 39), it is declared, among other things, as follows:

"RULE 1. When a school section is identified by the Government survey and no claim is at the date when the right of the State would attach, if at all, asserted thereto under the mining or other public land laws, the presumption arises that the title to the land has passed to the State, but this presumption may be overcome by the submission of a satisfactory showing to the contrary. Applications presented under the mining laws covering parts of a school section will be disposed of in the same manner as other contest cases.

"RULE 2. *The State will not be permitted to make selection in lieu of land within a school section alleged to be mineral in*
124 *character and for that reason excepted from its grant, whether returned by the Surveyor General as mineral or otherwise, in the absence of satisfactory proof that the base land was known to be chiefly valuable for mineral at the date when the State's right thereto would have attached, if at all. The proof must show the kind of mineral discovered upon the land and the extent thereof, when and by whom the discoveries were made,* as far as practicable, whether any claim to the land was asserted under the mining laws at the date when the State's right thereto attached, if at all, and if so, by whom, the nature and extent of the mining improvements placed upon the land by the mineral claimant, and what efforts have been and are being made to develop the land in good faith for

mineral purposes. If in any case the proof does not clearly show that the base land was known to contain valuable mineral deposits and to be chiefly valuable on account of such deposits, at the date the State's right would have attached thereto, a selection in lieu thereof will not be permitted. A certificate of the proper authorities that the base lands have not been sold, encumbered, or otherwise disposed of must also be furnished."

There is nothing in the record to show that any claim under the mining laws was asserted to the lands here in question, or to any portion thereof, at the time when the right of the State must have attached thereto, if at all (which was the date the State was admitted into the Union), and it is therefore to be presumed that they passed to the State under its said grant. In view of this presumption, which subsists until overcome by satisfactory proof to the contrary as provided in said circular, the Land Department would not be justified to order a hearing as asked by the State under its grant, notwithstanding the mineral return of the Surveyor General; no useful purpose could be accomplished by such a proceeding.

It is stated in the record that a large number of coal filings have been made for portions of the lands in said section 2, township 14 south, range 6 east. Such filings should not have been allowed in the absence of a determination (upon notice to all parties interested, as in other contest cases) that the lands were known to be chiefly
125 valuable for coal deposits at the date the State was admitted into the Union. You will therefore direct the local officers to notify the coal claimants that their filings will be cancelled unless within a reasonable time, to be fixed by your office, they shall, after proper notice to the State, and other interested parties, if any, submit evidence to satisfactorily show that the lands covered by such filings were known to be chiefly valuable for coal at the date the State was admitted into the Union. If evidence shall be submitted for the purpose and in the manner required, the case will be considered and adjudicated as are other contest cases; otherwise, the coal filings will be cancelled.

The decision of your office is modified to conform to the views herein expressed. (Italics ours.)

126 *Memorandum re petition for reconsideration*

Filed December 16, 1925

* * * * * * *

The petition filed herein on the 27th day of November, 1925, for reconsideration of certain views expressed in the opinion of the court filed herein November 23, 1925, is denied.

WALTER I. McCOY, *Chief Justice.*

127 *Order denying application for injunction pendente lite*

Filed December 18, 1925

* * * * * * *

This matter having come on for hearing upon the 17th day of October, 1925, upon the defendant's return to the order to show

cause as to why an injunction pendente lite should not be issued against the defendant herein, was argued by counsel for the respective parties and taken under advisement by the court, and the court, being duly advised, it is now this 18th day of December, 1925, ordered and adjudged that the application for injunction pendente lite be, and the same is hereby, denied, to which the plaintiff, by its counsel, duly excepts, and said exception is hereby allowed.

WALTER I. MCCOY,
Chief Justic, Supreme Court, D. C.

128 No. 44747. In equity. Filed October 9, 1925

Stipulation and agreed statement of facts

Filed June 1, 1926

* * * * * * *

It is stipulated between the respective parties to the above-entitled cause that said cause may be submitted to the court on the pleadings on file and on the following agreed statement of facts, to wit:

129 I. The SE. ¼ and W. ½ of section 14, all of sections 15 and 16, E. ½ and SW. ¼ of section 17, SW. ¼ and E. ½ of section 19, all of sections 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29, E. ½ and NW. ¼ of section 30, NW. ¼ and E. ½ of section 32, all of sections 33, 34, 35, and 36 of township 30 S., R. 23 E., M. D. B. & M., being all of the unsurveyed lands in said township, were surveyed in the years 1901 and 1902, and plat of survey was thereafter filed and duly accepted and approved by the Commissioner of the General Land Office on January 26, 1903.

The plat and general description attached to the field notes of said official survey returned said lands as mineral in character, and the same were at all times thereafter on file in the office of the United States surveyor general of the State of California and in the office of the Secretary of the Interior at Washington, D. C., and the same were official public records.

130 II. The map attached to the complaint in the above-entitled case is a true map of the land showing the mineral development as compiled from the official plats and records of the California State mining bureau and as brought down to 1904.

The first discovery of oil on section 36 was in 1918. The first discovery of oil in township 30 S., R. 23 E., M. D. B. & M., was in 1911. The first discovery of oil in the Elk Hills structure was in 1911.

Prior to the year 1910 no oil had been discovered in township 30 S., R. 23 E., M. D. B. & M., or in any township contiguous thereto, or cornering thereon, except that for many years prior to 1903 oil had been produced in township 30 S., R. 22 E., but the nearest discovery of oil to said section 36 prior to 1910 was in section 28 of township 30 S., R. 22 E., eight miles distant from said section 36.

No mineral was exposed in township 30 S., R. 23 E., M. D. B & M., prior to the year 1911.

131 III. In or about the month of January, 1900, representations were made to the Department of the Interior by a great num-

ber of persons, to the effect that lands in numerous townships, including township 30 S., R. 23 E., M. D. B. & M., were being applied for and patented under agricultural laws on the representation that the same were nonmineral, whereas said lands, or many of them, were mineral in character. Thereupon the Department of the Interior caused the suspension of said lands from agricultural entry and caused the examination into the mineral character thereof and received the reports therein and made the restorations, as shown by Exhibits A, B, C, D, E, and F, attached to the complaint.

IV. All documents annexed to the pleadings are true copies of the originals of which they purport to be copies.

V. The letter dated March 2, 1921, attached hereto and marked "Exhibit 1," shall be considered to be part of plaintiff's
132 Exhibit K, annexed to the complaint, and amended the charges, which as amended were dismissed by the Secretary of the Interior.

VI. No contest or proceeding was ever instituted in the General Land Office of the United States, or in any court, disputing the title of the State of California to said section 36, until a contest and adverse proceedings were initiated in the General Land Office as set forth in the charges referred to in the letter of January 14, 1914 (Exhibit 1, annexed to the answer herein).

VII. In the month of February, 1921, the attention of the Attorney General of the United States was directed to the fact that no action had been taken on said charges since 1914, but that by reason of the development of said section 36, which had been commenced in the year 1918, and the continued drilling and production of oil therefrom, it was desirable that prompt action should be taken upon said charges.

In the month of February, 1921, the attention of the Secretary of the Navy of the United States (said section lying
133 within the confines of petroleum naval reserve No. 1) was similarly directed to the pendency of said charges and to the desirability that a prompt determination be had of the status of the title of said section.

On February 28, 1921, the Commissioner of the General Land Office directed the attention of the Secretary of the Interior to the pendency of said charges and to the alleged facts upon which the same were based, as is shown by the commissioner's letter dated February 28, 1921, copy whereof is attached hereto and marked "Exhibit 2."

On February 28, 1921, the Secretary of the Navy, having been advised of the pendency of the charges with reference to said section 36, requested the Department of Justice to take action looking to the protection of the alleged interests of the United States and the Department of the Navy in said section 36.

Thereupon, by letter dated March 2, 1921, copy whereof is attached hereto and marked "Exhibit 3," the Secretary of the Interior
134 requested the Attorney General of the United States to take appropriate action, through the courts, looking to the protection of the Government's alleged interest in said section, pending final action on proceedings through the local land office at Visalia, California, with respect to said section 36.

VIII. Thereupon the Department of Justice took under consideration the advisability of taking action in the courts, as requested by the Secretary of the Interior and as requested by the Secretary of the Navy, looking to the appointment of a receiver to take possession of said section 36 and to the issuance of an injunction to prevent the further operation and development of said section by the transferees from the State of California, then in possession thereof.

In the latter part of the month of April, 1921, Assistant Attorney General Riter, of the Department of Justice, having under consideration the advisability of the institution of said proceedings, reached the conclusion that the Department of Justice was without jurisdiction to determine or to obtain a determination through the courts with respect to the title to said land, and that the determina-
135 tion of the title to said land, involving the determination of the mineral or nonmineral character of said land at the date of the approval of the survey thereof, was a matter within the jurisdiction of the Department of the Interior and that the Department of Justice would be confined in its efforts to protect the alleged interests of the United States and of the United States Navy in said land to the institution of proceedings for the appointment of a receiver and for an injunction against the further operation and development of said land, pending the determination by the Department of the Interior of the known mineral or nonmineral character of said land at the date of the approval of the survey thereof.

IX. Assistant Attorney General Riter, likewise, reached the conclusion that an injunction against the further operation of said land, pending the determination of title of said land, as aforesaid, would be attended with prejudice to the interests of the United States if the United States should ultimately recover said land, or if it should be determined by the Department of the Interior that the United States was entitled to said land, by reason of
136 the fact that an injunction against the operation of said land would permit the drainage thereof by operators on lands contiguous thereto. It was the view of Assistant Attorney General Riter, of J. Crawford Biggs, and of Commander H. A. Stuart that no injunction or receivership was advisable provided that there would be an early hearing in the Interior Department to determine the character of said land. It was considered important by the Department of Justice and by the representatives of the transferees that there be a final decision reached in said case at the earliest date possible.

X. The Department of Justice considered that the operators then in possession of said land were financially responsible and would be able to respond in damages for the amount of petroleum extracted from said land if their operations were permitted to continue pending a speedy determination of the question of the title thereto, and concluded that if the operators of said lands would agree to suspend the further development thereof, pending the speedy determination by the Department of the Interior of the question of the
137 title thereto, that no purpose would be subserved by the institution of proceedings as suggested by the Secretary of the Navy and the Secretary of the Interior.

This conclusion expressed the understanding and views of the representatives of the Department of Justice aforesaid, and also expressed the understanding of said Commander H. A. Stuart, who was of opinion that the issuance of an injunction would be disastrous and that no receiver was necessary in view of the fact that assurances had been given by the Interior Department that there would be an early hearing to determine the character of the lands.

XI. Thereupon on the 16th day of May, 1921, representatives of the transferees met with representatives of the Department of Justice and of the Department of the Navy, to wit, with W. D. Riter, Assistant Attorney General, and with D. D. Caldwell, special assistant to the Attorney General, in charge of matters affecting the naval reserves, and with Commander H. A. Stuart, of the United States Navy, inspector in charge of the naval reserves.

138 Conferences between the transferees and said members of the Department of Justice and representatives of the Navy were held on May 16th, May 17th, May 18th, May 19th, and May 20th, as the result of which conferences said transferees from the State of California, in possession of said lands, formally agreed with the Department of Justice to refrain from further drilling of said land upon the understanding that a speedy determination would be had in the Department of the Interior with respect to the title to said section 36.

On the 19th day of May, 1921, before said conferences and agreement with the Department of Justice were definitely concluded, Assistant Attorney General Riter requested the participation therein of J. Crawford Biggs, whereupon after further conferences on May 19th and May 20, 1921, in which the Assistant Attorney General and Mr. Caldwell and Commander Stuart and J. Crawford Biggs participated, it was agreed between said representatives of the United States Government, aforesaid, and the representatives of the transferees of the State of California that no action would be taken by the Department of Justice for the appointment of a receiver or

139 for an injunction against the operation of said lands, and that until a determination by the Department of the Interior as to the known mineral character of said lands there should be no further development thereof by said transferees in possession.

Said agreement was reached upon the understanding with the Assistant Attorney General that the transferees from the State of California would immediately endeavor to secure from the Department of the Interior an early hearing and determination with respect to the known mineral character of said section 36 at the date of the approval of the survey thereof and with respect to the title to said section 36.

XII. W. D. Riter was Assistant Attorney General, in charge of public lands and Indian affairs. In the month of April, 1921, Mr. Riter had, in addition to the Department of Justice file, the reports the Land Office had sent over to the Department of Justice containing the result of the investigations conducted by the special agents with respect to the character of said section 36, and Mr. Riter examined the same carefully and was very familiar with all the facts which they disclosed.

140 D. D. Caldwell was a special assistant to the Attorney General and had for a number of years last passed been in

constant contact with the matters pertaining to naval reserves Nos. 1 and 2 and with the question of title involved and with the location and productive quality of the lands therein situated, and Mr. Caldwell was fully apprised of the questions involved in respect to said section 36.

Commander H. A. Stuart was similarly informed and particularly with respect to the physical facts relating to the naval reserves and to said section.

Harry L. Underwood was an assistant to the Attorney General, connected with Land Office matters.

J. Crawford Biggs had been special counsel representing the Government of the United States in protracted litigation affecting the title to lands in the naval reserves and near said section 36 and was intimately acquainted with the legal and physical facts involved in the proceedings directed to be brought against said section 36.

Throughout the period from May 16th to May 20, 1921, and prior to the consummation of the agreement hereinbefore
141 referred to, all of said representatives were in more or less frequent consultation with respect to the matters hereinabove referred to, and on May 20, 1921, consulted the Honorable E. C. Finney, First Assistant Secretary of the Department of the Interior.

XIII. On the faith of the stipulation that further development of said land would be discontinued pending the determination of the known mineral character of said land, which stipulation said transferees entered into and which they observed, the contemplated proceedings to restrain such further development were not instituted.

XIV. On May 23, 1921, Assistant Attorney General Riter wrote to Raymond Benjamin a letter, copy whereof is hereto annexed and marked "Exhibit 4."

XV. After the conclusion of the conferences hereinbefore referred to, conferences which had been commenced by transferees from the State with the Department of the Interior, on May 16,
142 1921, and which had been continued in the Department of Justice as aforesaid were renewed with the First Assistant Secretary of the Interior and subsequently with the Secretary of the Interior. On various occasions between May 17th and May 24, 1921, representatives of the transferees from the State of California presented to the Secretary of the Interior and to the First Assistant Secretary of the Interior their request for a determination with respect to the title to said section 36. The matter was argued before the Secretary of the Interior on May 25, 1921, the First Assistant Secretary of the Interior being present, and on May 26, 1921, with the permission of the Secretary of the Interior, a brief was filed accompanied by a map and copy of said brief and the letter of transmittal thereof are hereto annexed and marked, respectively, "Exhibits 5 and 6."

Said map showed substantially the same state of development of said township 30 S., R. 23 E., M. D. B. & M., and of the other townships in the vicinity, as is shown on the map attached to the complaint herein, and covered all of the area covered by the map attached to the complaint.

143 XVI. Thereupon, on May 28, 1921, the Secretary of the Interior gave written notice of the proceedings thereafter held before him on June 8, 1921. Said written notice was given to the

transferees and to the Attorney General and to the Secretary of the Navy, and copies of the said notices served upon the Attorney General and the Secretary of the Navy are attached hereto and marked, respectively, "Exhibits 7, 8, 9, and 10."

XVII. Pursuant to said notices, said matter was heard before the Secretary of the Interior, the First Assistant Secretary of the Interior being present, and was also attended by C. D. Hamel, appearing for the United States Land Office; by D. D. Caldwell, Special Assistant Attorney General; by Commander H. A. Stuart, appearing on behalf of the Bureau of Steam Engineering of the United States Navy, and by Harry L. Underwood, special assistant to the Attorney General. All of the transferees from the State were represented at said hearing.

XVIII. Mr. Hammel was connected with the Department of the Interior from 1909 until 1915, and had for many years been
144 the representative of the United States Land Office in California as a member of the field division of the United States Land Office, and subsequently from 1915 to 1922 as a special assistant to the Attorney General, assisting in the preparation for trial and trial of the so-called withdrawn oil-land cases in California and Wyoming. He was fully conversant with the contentions of the United States Land Office with respect to the law and facts affecting said section 36. He had been connected with and had participated in a large number of suits instituted by the Government of the United States with respect to lands in naval reserves Nos. 1 and 2. Prior to his attendance at the hearing aforesaid he had reviewed in detail with the Special Assistant Attorney General in charge in California the facts and legal questions involved in the matter of the adverse proceedings affecting said section 36.

At the request of the special assistant to the Attorney General in charge of these matters in San Francisco, California, he had discussed the matter in question with the Commissioner of the General Land Office and with the Assistant Attorney General in
145 charge of the work in Washington, D. C., upon his arrival at Washington in the month of February, 1921, and again discussed the matter with the representatives of the Department of Justice and Assistant Attorney General Riter in the month of June, 1921, prior to the hearing of said proceedings before the Secretary of the Interior. He attended said hearings at the direction of Mr. Riter, who requested Mr. Hamel to attend said hearing because of his familiarity with the litigation affecting naval reserve lands and the question of title therein involved.

XIX. First Assistant Secretary of the Interior E. C. Finney has been connected with the Department of the Interior since 1894 and has been an officer or employee in the office of the Secretary of the Interior since 1909. Mr. Finney had visited the Elk Hills in 1920 and was in the vicinity for about two days and on said section 36 for about a half hour. He is not a geologist, mineralogist, or oil man. In May and June, 1921, at the time of the proceedings before the Secretary of the Interior, Mr. Finney was familiar with and had knowledge of the contents of the reports and records in the files of the Department of the Interior relating to said section 36.
146 The reports of the field agents and mineral inspectors and others in respect to said section were in said files.

All statements made by Mr. Finney to the Secretary of the Interior in respect to said section or any matter connected therewith were based upon the knowledge derived by him as aforesaid. The statements and arguments made by the representatives of the transferees from the State presented no material facts not disclosed by the records which Mr. Finney had theretofore had before him except the date when the Standard Oil Company bought the section or part thereof from the State of California or from its transferees. At the conclusion of the proceedings before Secretary Fall, as is disclosed by the record of said proceedings (Exhibit 2, annexed to the answer) the Secretary of the Interior asked Mr. Finney and the other representatives of the Government whether the facts stated by the representative of the transferees were admitted, and Mr. Finney replied that the statement made was substantially correct.

It was the contention of the transferees from the State, with which contention Assistant Secretary Finney disagreed at the hearing, that it could serve no purpose to take evidence in the local land office to determine the question whether or not said section or the lands adjacent thereto showed structural and geological conditions indicative in 1903 of the existence of oil on said section under conditions justifying development therefor for the reason that said question presented an immaterial question of fact and said question was not argued or discussed at the proceedings held on June 8, 1921, or at any conferences prior thereto between the representatives of the transferees and the Secretary of the Interior or the First Assistant Secretary of the Interior, except as shown in the brief (Exhibit 5), and in the transcript of proceedings (Exhibit 2, attached to answer).

147 XX. The matters presented on June 8, 1921, to the Secretary of the Interior and the matters presented in the brief filed with the Secretary of the Interior as aforesaid, on May 26, 1921, were, prior to said hearing, known to the representatives of the Department of Justice and of the Navy Department and of the Land Office present at said hearing and to the Secretary of the Interior and to the First Assistant Secretary of the Interior, the same having been urged at the various discussions and conferences hereinbefore referred to, and were known to Assistant Attorney General Riter, and all of said representatives of the various departments of the Government of the United States were at the date of said hearing, on June 8, 1921, fully conversant with the contentions of the Land Office of the United States and of the transferees of the State of California with respect to the questions of law and fact involved in the proceedings which were on said date heard by the Secretary of the Interior.

XXI. On June 9, 1921, the decision of the Secretary of the Interior was rendered and is set forth in Exhibit L attached to the complaint, and said Exhibit L was written by the First

148 Assistant Secretary of the Interior upon the direction of the Secretary of the Interior.

Said decision was promulgated by William Spry, Commissioner of the General Land Office, on June 13, 1921, as set forth in Exhibit M attached to said complaint.

XXII. After said proceedings of June 8, 1921, Messrs. Caldwell, Underwood, and Hamel made their report thereof to Mr. Riter, and

Mr. Riter understood therefrom that the Secretary of the Interior had decided that the lands in said section 36 were not known mineral lands at the date that the grant to California became effective, and thereupon the Department of Justice took no further steps in the matter.

XXIII. It is customary practice in the Department of the Interior that in contested cases involving disputed facts, hearings or trials are held before the proper officials of the local land office, where all parties may present testimony and where witnesses may be examined and cross-examined under oath, and it has never been the practice of the Secretary of the Interior to take the testimony of witnesses on disputed questions of fact, but it has been the practice of the Secretary of the Interior to permit presentations in cases pending before him, including statements of agreed facts and of facts contained in the records, followed by arguments thereon, and to permit the introduction of documentary evidence, and to render decisions upon the record and upon such presentations.

149 XXIV. No petition for rehearing of said decision was ever filed and no further action of any kind with reference to said decision was taken by the Department of the Interior until May 8, 1925, when the defendant in this action signed the letter to the register and receiver of the United States Land Office at Visalia, a copy of which letter is attached to the complaint as Exhibit O.

XXV. The transcript of the hearing held before Secretary Fall on June 8, 1921, annexed to the answer, is true and correct record thereof.

XXVI. It is admitted that the consideration alleged in Paragraph VIII of the complaint to have been paid by the plaintiff and the other persons mentioned therein in connection with the purchases of interests in lands in said section 36 were paid as alleged and that the contracts made with reference thereto were made as alleged in said complaint.

150 From and after the year 1903 plaintiff and other transferees from the State of California paid to the State of California for taxes assessed against the respective portions of said section 36, respectively, in their possession, the total of $333,372.64, of which sum $309,703.85 was assessed against the real estate and the sum of $23,118.79 was assessed against improvements situated thereon. Of said total of $333,372.64, plaintiff and its predecessors in interest, between the years 1910 and 1925, paid $328,003.39 on the portions of said section 36 occupied by them.

For the years 1904 to 1907, inclusive, said land was assessed for taxes by the State of California on a valuation of $1.00 per acre; for the year 1908, said land was not taxed; for the year 1909, it was again assessed on a valuation of $1.00 per acre; for the year 1910 on a valuation of approximately $2.00 per acre; for the year 1911 on a valuation of $5.00 per acre; for the years 1912 to 1918, inclusive, said land was so assessed for taxes on a valuation of $25.00 per acre; for the year 1919, on a valuation of $250.00 per acre; for the year 1920, on a valuation of $1,500.00 per acre; for the years 1921 to 1924, inclusive, on an average valuation in excess of $4,000.00

151 an acre; for the year 1925, on an average valuation in excess of $1,500.00 per acre.

The State of California sold said section 36 and portions thereof in the manner recited in the complaint, and sales of land in said section 36 or of portions thereof were made between the various parties named in the complaint in the manner recited in the complaint and for the considerations therein recited.

The defendant, in stipulating to the facts in this Paragraph XXVI, set forth, does so without waiving the contention that neither the State of California nor any of its grantees or transferees could or did lawfully do any of the things herein recited to have been done by reason of the fact that neither said State nor any of its transferees at any time had any title or legal claim to said section or any part thereof.

XXVII. It is agreed that the court will take judicial notice of all regulations, rules, and decisions and rules of practice of the Department of the Interior. Certain rules of practice of the Department of the Interior are annexed, marked "Exhibit 11."

152 XXVIII. All of the averments of the answer, except as admitted by this stipulation, are to be taken as denied by the plaintiff.

XXIX. The averments of fact of Paragraph XV of the answer contained in lines 7 to 27, inclusive, are correct.

XXX. The averments of Paragraph XIX of the answer are correct.

XXXI. The annexed summary of order of withdrawal of lands from agricultural entry, dated September 14, 1908, pending classification by the United States Geological Survey, is a true summary of said order and is marked "Exhibit 12."

The annexed summary of classification of lands, dated June 4, 1909, is a true summary of said classification and is marked "Exhibit 13."

The annexed summary of order of the Secretary of the Interior approving said classification and dated June 7, 1909, is a true copy of said summary and is marked "Exhibit 14."

153 The annexed summary of departmental order of September 27, 1909, and of the Executive order of July 2, 1910, and of the Executive order of September 2, 1912, are true summaries, respectively, of said orders and are marked, respectively, "Exhibits 15 and 16 and 17."

Various of said lands subject to said orders of withdrawal were thereafter restored. It is stipulated that summaries of said orders of restoration may hereafter be filed for the record in this case.

All of said orders on the dates respectively shown were filed in the United States land office at Visalia, California, and in the records of the Department of the Interior at Washington, D. C., and were official public records.

XXXII. The foregoing facts are stipulated as the true and correct facts, provided, however, that each of the parties to the above-entitled cause hereby expressly reserves all objections to the relevancy or materiality of the foregoing facts and exhibits attached hereto or to the pleadings herein or any of them, and all such objections shall be deemed to have been made and submitted to the court.

154 XXXIII. It is agreed between counsel for the respective parties to this action that, any allegations in the complaint or averments or denials in the answer to the contrary notwithstanding,

the sole issue for determination in the above-entitled proceedings is the jurisdiction of the defendant or of the General Land Office to entertain or act upon the proceedings directed by the letter dated May 8, 1925, a copy of which letter is attached to the complaint as Exhibit O.

XXXIV. The facts stipulated herein are stipulated solely for the purposes of this action, and except for the purposes of this action shall not be binding upon either of the parties hereto, nor shall this stipulation be taken as an admission in any future proceedings, judicial or otherwise, by either party of any fact herein referred to or stated, or be evidence against or on behalf of either party in any future proceeding, either judicial or otherwise.

Dated May 29, 1926.

OSCAR SUTRO,
F. D. MCKENNEY,
LOUIS TITUS,
Attorneys for the Plaintiff.
W. C. MORROW,
Attorney for the Defendant.

155 EXHIBIT 1

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 2, 1921.

Amending charges adverse proceedings

REGISTER and RECEIVER,
Visalia, California.

SIRS: By letter "FS" of January 14, 1914, you were advised that from the reports of a mineral inspector and special agent it appeared that the land embraced in sec. 36, T. 30 S., R. 23 E., M. D. M., "is mineral in character and contains valuable deposits of petroleum and that this fact was well known in 1901 and 1902, the years during which the land was surveyed and the plat of survey was approved by the U. S. Surveyor General."

In view of these reports you were directed to proceed in the case in accordance with circular of January 19, 1911, and in the notice provided for in paragraphs 3, 4, and 5 thereof "you will state that a mineral inspector and a special agent of this office charge:

"(1) That the land is mineral in character, containing valuable deposits of petroleum.

"(2) That the land was known to be mineral in character at and prior to the date of survey, December 20, 1901."

I am now in receipt of a letter from Chief of Field Division Favorite of San Francisco, California, dated February 2, 1921, in which he states that his records indicate that the last action taken was your letter of January 21, 1914, requesting the field division for the names and addresses of interested parties to be served with notice of these adverse proceedings.

156 It appears from the records of this office that while the plat of survey was approved by the Surveyor General August

1, 1902, as stated in letter "FS" above referred to, the plat was not accepted by this office until January 26, 1903. Under the holding in United States vs. Morrison (240 U. S. 192) the right of the State would attach at the date the survey is accepted by this office and not the date of approval by the Surveyor General. You are therefore directed to proceed in accordance with circular of February 26, 1916 (44 L. D. 572), and in the notice provided for in paragraphs 3, 4, and 5 thereof you will state that representatives of this office charge:

"(1) That the land is mineral in character containing valuable deposits of petroleum.

"(2) That the land was known to be mineral in character at and prior to the date of the acceptance of the plat of survey of this office, January 26, 1903."

By letter of even date herewith I have directed Chief of Field Division Favorite, San Francisco, California, to at once furnish you with the names and addresses of the parties to be served with notice hereof.

Very respectfully.

(Signed) CLAY TALLMAN, *Commissioner.*

157 EXHIBIT 2

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, February 28, 1921.

The SECRETARY OF THE INTERIOR.

SIR: Under date of January 14, 1914, this office advised the register and receiver, Visalia, California, that chief of field division at San Francisco, California, under date of April 5, 1913, transmitted to this office reports of a mineral inspector and a special agent from which it appeared that the land embraced in sec. 36, T. 30 S., R. 23 E., is mineral in character and contains valuable deposits of petroleum and that this fact was well known in 1901 and 1902, the years during which the land was surveyed and the plat of the survey was approved by the United States Surveyor General. The township was withdrawn from agricultural entry September 14, 1908, pending classification by the Geological Survey; was classified as oil land June 4, 1909, which classification was approved by the Secretary of the Interior June 7, 1909; was withdrawn from mineral entry by departmental order of September 27, 1909, pending proposed legislation, and was included in petroleum reserve No. 2 by Executive order of July 2, 1910, and naval petroleum reserve No. 1 by Executive order of September 2, 1912. The survey of this section was completed in the field December 17, 1901, approved by the Surveyor General August 1, 1902, was accepted by this office January 26, 1903. This section was reported as mineral by the surveyor who executed the survey and by the Surveyor General, and was also noted on
158 the plat as mineral land. It appears further from the records of this office on March 7, 1903, the State offered the land in said section 36 as base for indemnity school selection on the ground that the base land was mineral in character, but on December 18, 1909, the selection was cancelled by this office because of conflict with

another indemnity school land selection. The register and receiver were therefore directed by letter of January 14, 1914, to issue notice of charges:

"(1) That the land is mineral in character, containing valuable deposits of petroleum.

"(2) That the land was known to be mineral in character at and prior to the date of the survey, December 20, 1901."

They were also directed to confer with the chief of field division, ascertain the names and addresses of all interested parties, and thereafter serve notice under the rules.

I have now received a letter from Chief of Field Division J. H. Favorite, San Francisco, California, dated February 2, 1921, stating that his records indicate that the last action taken was in January 4, 1914, when the register and receiver of Visalia called on the field division for the names and addresses of the interested parties. Inasmuch as under the holding in case of United States v. Morrison (240 U. S. 192), that the right of the State would attach on the acceptance by this office of the plat of survey, directions will be immediately given to the register and receiver to amend the charges as follows:

"(1) That the land is mineral in character, containing valuable deposits of petroleum.

"(2) That the land was known to be mineral in character at and prior to the date of acceptance of the plat of survey by this office January 26, 1903."

159 It appears from the reports that this section was covered by mineral locations as early as 1899.

I inclose herewith copies of reports of the special agent and mineral inspector, with recommendation that the Department of Justice be requested to take appropriate action through the courts to protect the interests of the Government pending final action on the proceedings mentioned.

The chief of field division reports that the Standard and other oil companies have drilled a large number of wells on said section 36 during the past two years, which are now producing a large amount of oil.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

160 EXHIBIT 3.

DEPARTMENT OF THE INTERIOR,
Washington, March 2, 1921.

DEAR MR. ATTORNEY GENERAL: I enclose herewith copy of a letter from the Commissioner of the General Land Office dated February 28, 1921, wherein he recommends that appropriate action be taken through the courts looking to the protection of the Government's interests pending final action on proceedings through the local land office at Visalia, California, charging sec. 36, T. 30 S., R. 23 E., M. D. M., to be mineral (oil) in character.

In view of the facts stated, I concur in this recommendation.

Cordially yours,

JOHN BARTON PAYNE.

The honorable the ATTORNEY GENERAL.

161 **EXHIBIT 4**

MAY 23, 1921.

RAYMOND BENJAMIN, Esq.,
Special Assistant to the Attorney General,
242 Post Office Building, San Francisco, Calif.

SIR: You will recall that in writing to you about this matter a few days ago I mentioned the fact that Mr. Loomis, of the Standard Oil Company, felt disinclined to have Mr. Sutro take this matter up with you at San Francisco and expressed the desire to have a conference here. I got the impression from this that for some reason or other Mr. Loomis preferred that you should keep out of the matter, but when Mr. Sutro called last week his attitude was entirely different. He expressed regret that you were not here to participate in the matter and showed no disinclination whatever to discuss the same with you. He impressed me as being absolutely frank and straightforward. The main thing to which he called attention was this: That about the time the State of California acquired title to the section in controversy the regulations of the Interior Department were to the effect that the presence of mineral must be actually known so far as any particular section is concerned, it being immaterial what conditions exist in the surrounding area. He therefore urged that inasmuch as this particular section was not known to contain oil at the time the State acquired title, it was immaterial to enter on a discussion of the presence of oil in the adjoining territory. In short, he said, that the regulations of the Interior Department just referred to had become a rule of property and ought not to be disturbed with respect to land where the title had already passed. He emphasized the fact that the decision in United States v. Southern Railway Co. (251 U. S. 1) was really based on the fact that fraud had been perpetrated. As a matter of fact the decision
162 in Diamond Coal & Coke Co. v. United States (233 U. S. 236) seems to have been in a great measure influenced by the fact that fraud was also perpetrated there. The last clause in the opinion is very significant, where the court says: "Neither are we considering other minerals whose mode of deposition and situation in the earth are so irregular or otherwise unlike coal as to require that they be dealt with along other lines." Mr. Sutro emphasized that fraud was entirely lacking in the present case and he called attention to the fact that even as late as 1916 certain officials, in testifying before a congressional committee, in effect said that they regarded this section as not valuable for oil.

In view of the fact that certain adjoining sections, or sections close by, were involved in the suit instituted by the Government in California before Judge Bledsoe, in which an adverse decision was rendered, from which the Government failed to prosecute an appeal, I thought it advisable to call into the conference Mr. J. Crawford Biggs, of Raleigh, N. C., who represented the Government in that suit. He accordingly came to Washington and discussed the matter at considerable length with Mr. Caldwell and Mr. Sutro. The upshot of it all was that it was not for this department to determine whether this section was known mineral land at the time the State acquired title, and that all we were asked to do was to preserve the

property until this question of fact could be settled by the Interior Department. Accordingly, Commander Stuart, of the Navy Department, who has charge of its oil interests in the naval reserve in California, met with Mr. Biggs, Mr. Caldwell, and myself one day to discuss whether a receivership was really necessary to protect the property pending the determination of this question of fact. We all thought it advisable to avoid a receivership if the Govern
163 ment's interests can otherwise be safeguarded. Commander Stuart was of the opinion that this could be accomplished, and later in the day they called upon Mr. Finney, the Assistant Secretary of the Interior. We regard the Standard Oil Company as entirely solvent and we are of the opinion that a scheme can eventually be worked out by which the drilling operations of that company will be carried on in such a way as to preserve the property from the operations on adjoining ground, without exhausting the property of all of its oil contents pending a determination of this question of fact.

It therefore looks as though it would be unnecessary to institute any suit at this time, the details still remain to be worked out. I shall keep you advised of the progress.

With reference to the argument in the other matter which takes place before the Secretary of the Interior on June 15th, I can well appreciate the embarrassing position in which you would be placed if you were called upon to argue this matter, and accordingly telegraphic instructions were sent a few days ago to Mr. Hamel to represent the Government.

Respectfully,

(Signed) W. D. Ritter,
Assistant Attorney General,
(For the Attorney General).

164 Exhibit 5

Before the honorable the Secretary of the Interior

In the matter of section 36, township 32 south, 23 E., M. D. B. & M. (California)

This is the argument in support of the request that the Secretary of the Interior decide that in view of the previous action of the department and of its regulations in force in January, 1903, the title to said section is vested in the State of California or its grantees.

By act of March 3, 1853, the 16th and 36th sections were granted to California for school purposes.

Sections 36 of 30-23 was identified by the survey, of which the official plat was approved in Washington on January 26, 1903. In 1904 there was a determination by the Commissioner of the General Land Office that the section was nonmineral.

By telegram of February 28, 1906, the commissioner ordered the register and receiver at Visalia to "suspend from disposition until further orders" township 30-23 with some forty others. The order was made in response to the petition of 800 miners who complained that mineral lands were being acquired by nonmineral entries. By

order July 19, 1900, the suspension was "continued for a reasonable time pending inquiry as to the true character of the land which is now in progress." In subsequent correspondence of the commissioner it appears that the lands "were suspended from disposition under the agricultural land laws on account of their alleged
165 mineral (oil) character." (Letter of Oct. 23, 1903, to E. C. Ryan; letters of February 11 and 20, 1904, to R. & R., Visalia.)

March 22, 1904, E. C. Ryan, upon order of the Secretary of the Interior, made report based upon examinations theretofore made that the land in this township was nonmineral.

The suspension was terminated by an order of the commissioner in his letter of April 5, 1904, to register and receiver, Visalia:

"As to the following tracts where no mineral has been discovered it is believed that no good reason exists for further suspension.

"Accordingly the lands hereinafter described are hereby relieved from suspension.

* * * * * * *

"All of T. 30 S., R. 23 E., M. D. M.

* * * * * * *

"Make the proper notations upon the records of your office."

This restoration of the land to "disposition under the agricultural land laws" is necessarily a determination of its nonmineral character. The order contains, moreover, the specific finding that "no mineral has been discovered" in township 30–23.

In 1902 the land was surveyed. The survey was approved in Washington January 26, 1903, thus identifying the land and vesting title in the (U. S. v. Morrison, 240 U. S. 192) (or did it vest on May 16th, 1903, when the plat was filed in the local land office c. f. 37 L. D. 164, 165) unless the land actually contained valuable mineral and was well known at the date of the survey to contain such deposits.

"States acquired a vested right in school sections in place which are not otherwise appropriated and not known to be mineral at the time they are identified by the survey." Wyoming v. U. S. (Supreme Court of the United States, decided at this term of the court).
166 On January 24, 1908, the U. S. local land office certified to the State that there was no valid claim in that office against the State's title. This clearance, while having no official status in the department (31 L. D. 212), has been referred to and relied upon to support the State's title to school land. (Water Mining Co. v. Bugbey, 96 U. S. 165.)

August, 1908, the predecessors in title of present owners applied to the State to purchase the section.

Jan. 20, 1910, State patents issued to the purchasers.

Jan. 14, 1914, the commissioner directed adverse proceedings to be filed as to this section. No process was served and the proceedings lay dormant until March 3, 1921. In the midst of the heated controversy between the oil men and the Navy Department it was not known even at the hearings before Congress that this proceeding was pending. (See testimony of Commissioner Tallman himself that title to this section was not disputed.)

In 1916 this section and other patented lands in "naval reserve 1" were tendered to the Navy. The tender was fully discussed in proceedings of the special joint conference of the Committee on Public Lands at hearings held on H. R. 406, December 18th and 23rd, 1916. The offer was declined because the department did not believe the land to be oil land. Assistant Secretary Roosevelt on January 15, 1916, stated that there were 38,124 acres in naval reserve #1, "of which 2,470 has been proved, and as far as we know there is no further oil in reserve No. 1" (hearings, ib., p. 17), and Commanders Wright, Richardson, and Landis testified to the unsatisfactory character of the land as mineral, while E. D. Latham, the Navy's geologist said, "I do not think it is commercial oil at all." Mr Latham was said by the Government representatives to be the best-
167 informed oil expert in California (statement of E. J. Justice, hearings, ib.). (Hearings before Senate Committee on Public Lands, February 9, 1916, H. R. 406, p. 240; see Lt. Commander Landis' test. p. 227, Comm. Richardson, p. 188.) This land condemned by these witnesses in 1916 is now said to have been well-known oil land in 1903.

In 1919, sixteen years after the survey, fifteen years after determination that the land was nonmineral, ten years after purchase from the State, the present owners drilled the property and discovered oil. Immense investment has been made on it, and now, seven years after these proceedings were instituted, of which no notice was taken by anyone, it is proposed that the Government shall assert that the State took no title to the land because it was well known to be mineral at the date of the survey. It is proposed to assert the mineral character of the land in 1903, not because of the discovery of mineral on the section (which was the test under repeated regulations and decisions of the department for determining the mineral character of a school section in place, see infra) but because under the rule of the Diamond Coal & Coke case the geological structure was such as to establish the character of the land as well-known mineral land.

To support this position, the Elk Hills case (U. S. v. Southern Pac. Co., 250 U. S.) is cited.

That decision is not applicable here:

1. Because it dealt with railroad indemnity selections and not with a school-land grant. (The difference is emphasized in Wyoming v. U. S., decided at this term of the Supreme Court; copy filed herewith.)

2. The Elk Hills decision turned chiefly on the fact that the officers of the railroad company were not acting in good faith but were
168 attempting to obtain the patent "by representing that the lands were not mineral when they believed the fact was otherwise." (The only cases cited by the court as supporting the conclusion were fraud cases; see end of opinion.)

3. Under the long-standing rule of the department in force when the survey was approved the sole test of the mineral character of a school section in place was the actual discovery of mineral in the section.

4. Because the nonmineral character of the land had been determined by the department in 1904.

It is claimed that the Elk Hills decision controls this situation because in it the Supreme Court decided that the indemnity lands selected by the railroad were known mineral lands so believed by the railroad officials at the date of the selection and its approval. We believe the decision is no more controlling here than was the decision of Judge Bledsoe in the other Southern Pacific case, in which he decided that at the date of the Southern Pacific patent for sections 31 (adjoining this section on the east) and 29 and 33, Tp. 30 S., R. 24 E., to wit, in 1902, these were nonmineral. From that decision the Government did not even appeal, for the obvious reason that without fraud there was no case, although the time for appeal had not elapsed when the Elk Hills case was decided. Why should the issue be tried anew if the Government's case was not worth an appeal from an adverse decision of a trial court, and this at a time when the Navy was in bitter controversy with the oil men?

School sections in place stand in a special class. There are no proceedings to determine their mineral character. No application is filed by anyone. No representations are made. No proceedings are instituted. The department has power to determine the character of the land. If it finds it to be nonmineral, and the survey is
169 complete, that fixes the State's title as of the date of approval of the survey. The State's only muniments of title are the granting act and the determination of the department as to the character of the land.

Such a determination was had here. It is said that the report on which it was based was superficial. The State of California and its bona fide grantees are not responsible for that. The State of California could not look behind the order of the department restoring the land to entry as nonmineral. The department's general finding may not avail a homestead entryman, or a desert entryman, or an applicant for railroad patent or a lieu land selection. In each of these cases the applicant selector or entryman is required to prove the nonmineral character of the land. A general determination by the department may aid him but it is not necessarily conclusive. But the case is different where a school section in place is involved. There the only proceeding is a determination, ex parte or otherwise, by the Interior Department to fix the character of the land. That is why this case differs from the Elk Hills case, the Scrippers' case, etc. And it should also be noted that in railroad grants the railroad's belief and representations are of the essence of the matter.

In school-land grants clear knowledge of mineral character is essential to mineral classification.

"Belief" is not "knowledge." (Sullivan v. Iron Silver Co., 143 U. S. 431.)

Adjacent discovery and geological conditions are not discovery of mineral on the land. (Miller v. Chrisman, 140 Cal. 442, 197 U. S. 137.)

The reason for the distinction is obvious. In any application for land, whether by homestead entryman, a desert entryman, a railroad indemnity selector, hearings are held and proof taken at which
170 all evidences of mineral character may be received and a decision reached. But it would be intolerable to contemplate that a State's title to a school section in place should be left forever

uncertain so long as geologists or scientific men could be found to testify that at the date of the survey in their opinion the land gave indication of being mineral in character. The rule that the mineral must be found in place is not only a rule of property but a rule of necessity in the case of school-land selections if titles to such sections are to be ever settled.

Is it conceivable that after this classification of the land as nonmineral the State in 1904 would have been permitted to surrender this as a mineral section upon proof of the nearest discovery of mineral ten or more miles west and an equal distance south? Obviously not.

In every case of disposal of public lands the determination of questions of fact is for the Secretary of the Interior and the Commissioner of the General Land Office. Where patents, or their equivalents, are issued such patents are conclusive on questions of fact, in the absen e of fraud or mistake, and rulings to this effect are supported by reference to the general authority of the department as well as to the provisions of the particular statute authorizing the grant. (Burke v. Southern Pacific, 234 U. S. 669, and cases therein cited.)

And in cases where no patent is issued the rule is the same; that a determination by the Land Department of facts essential to the grant is conclusive. In Shaw v. Kellogg (170 U. S. 312) the grant was of "vacant land, not mineral." "No patent was issued; the approved survey taking the place of one under the statute." The commissioner took the position that under the peculiar terms of the granting statute the approval of the survey operated as a de-
171 termination that the land was of the class and character designated in the act; that the title had passed from the Government." This theory was sustained, the court observing, "There is no magic in the word 'patent' or in the instrument which the word defines." (See the approval of Shaw v. Kellogg in Burke v. Southern Pacific, 234 U. S. 669, 702–704, from which the foregoing quotations are taken.)

The rule of the department in January, 1903, was fixed that a school section in place was to be deemed mineral or not according to whether mineral had been discovered on it or not. The regulations permitted the State to surrender the land only upon proof of mineral discovery. The decisions were equally clear.

In the hearings before the Senate the Committee on Public Lands, 64th section on E. R. 406, it was suggested by Senator Clark and admitted by the Government counsel (Mr. Mills) in the Southern Pacific case that the rule which I now submit was the holding for many years (p. 264). The rule was first changed September 5, 1905, in which he said that the former rule that mineral exposed in place would have to be shown before land could be classed as mineral in character would be abrogated. (34 L. D. 194.) That such had been the rule particularly in classifying sections 16 and 36 in place amply appears.

Thus in the regulations of the department, May 27, 1891 (24 L. D. 548), and March 6, 1903 (32 L. D. 39), it is said in rule 1 that the presumption is that title was passed to the State upon survey.

"RULE 2. The State will not be permitted to take selection in lieu of land within a school section alleged to be mineral in character and for that reason excepted from its grant whether returned by the Surveyor General as mineral or otherwise in the absence of satisfactory proof that the bare land was known to be chiefly valuable for mineral at the date when the State 'right thereto would have attached if at all. The proof must show the kind of mineral
172 discovered upon the land and the extent thereof when and by whom the discoveries were made,' etc., etc. If in any case the proof does not clearly show that the bare land was known to contain valuable mineral deposits and to be chiefly valuable on account of such deposits at the date the State's right would have attached thereto a selection in lieu thereof will not be permitted."

The rulings of the department prior to 1905 are exemplified in the following decisions:

Cases:

Dughi v. Harkins, 2 L. D. 721.

Commissioners v. Alexander, 2 L. D. 126.

Abraham v. Miner, 9 L. D. 408.

Warren v. State of Colorado, 14 L. D. 684.

Quoting Davis v. Newbold, 139 U. S. 507, Diffeback v. Hawks, 115 U. S. 392, and many others.

To establish the universal character of a school section there must be the equivalent of discovery.

State of California (33 L. D. 356-8)

"It has been repeatedly held by this department that the proof of the mineral character of land must be specific and based upon the actual production of mineral; that it is not enough to show that neighboring or adjoining lands are mineral in character, and that the lands in controversy may hereafter develop minerals to such an extent as to show its mineral character, but it must be shown as a present fact that the lands are mineral, and this must appear from actual production of mineral and not from a theory that the lands may hereafter produce it." (Hooper v. Ferguson, 2 L. D. 712; Dughi v. Harkins, ibid. 721; Roberts v. Jepson, 4 L. D. 60; Cleghorn v. Bird, ibid. 478; Lientz et al. v. Victor et al., 17 Cal. 272; Alford v. Barnum et al., 45 Cal. 482.)

Commissioners v. Alexander (5 L. D. 126, 127)

"The State's title vests, if at all, the date of the 'completion of the survey' (Cooper v. Roberts, 18 How. 173; Virginia Lode, 7 L. D. 459), and if the land, although in reality mineral, was not then known to be mineral, the subsequent discovery of its mineral character would not devest the title which had already passed." (State of California v. Poley & Thomas, 4 C. L. 18; Virginia Lode,
173 7 L. D. 459; J. Dartt, 5 C. D. O. 176; Townsite of Silver Cliff v. Colorado, 6 C. L. O. 152; State of Colorado, 6 L. D. 412; Mining Co. v. Consolidated Mining Co., 102 U. S. 175.)

"In the case of the State of California v. Poley and Thomas, supra, this question is considered at some length by Secretary Schurz, and

it is held: First, that under the grant by the act of March 3, 1853 (10 Stat. 244), of sections sixteen and thirty-six to California for school purposes, the title to said sections vests in the State upon survey thereof, if their mineral character was unknown at that date; and second, that having so vested, it is not subject to be divested by the subsequent discovery of the mineral character of the land.

"As to said first proposition, Secretary Schurz says, 'In compliance with the established doctrine of the courts, it must, I think, be held, that the title vested in the state at the date of survey, when the land was not known to be mineral, or was not treated as such by the Government.'"

Abraham L. Miner (9 L. D. 408)

"The fact that this land lies in what is known as the Colorado coal fields, which includes about two thousand five hundred square miles, in which there is probably not more than one hundred square miles of land valuable for coal, and the further fact that there are valuable coal deposits in the vicinity of these lands, do not prove these lands to be coal lands within the meaning of the law. * * * The grant to Colorado of the sixteenth and thirty-sixth sections includes all kinds of lands, except mineral lands, so that upon principle all lands embraced in said sections except mineral lands would pass to the State by the grant, the same as agricultural lands pass by sale under the pre-emption law. No patent or certificate was necessary to pass them to the State, if they were not mineral in character. In Davis v. Weibbold (139 U. S. 507) it is said (page 519): 'The exceptions of mineral lands from pre-emption and settlement and from grants to states for universities and schools, for the construction of public buildings, and in aid of railroads and other works of internal improvement, are not held to exclude all lands in which minerals may be found, but only those where the mineral is in sufficient quantity to add to their richness and to justify expenditure for its extraction, and known to be so at the date of the grant.' Applying these principles to the case a bar, it is clear that the evidence fails to prove the mineral character of the land in question at or before the first day of August, 1876."

Warren et al. v. State of Colorado (14 L. D. 681, 684, 685)

Indeed the department decided in a case involving a section in an adjoining township that in the absence of proof of a permanent deposit of mineral the land would not be so classed.

174 "Thus the principal result of what little prospecting and developing have been done is the finding of 'indications' of mineral, and it can not be said that the indications found on these lands in section 21 (of T. 30 S., R. 22 E., M. D. M., California), of oil and asphaltum, demonstrate that there is a permanent deposit of these minerals which will pay to work."

Tulare Oil & Mining Co. v. Southern Pacific (29 L. D. 269, 272)

"The mineral claimant * * * must show, not that neighboring or adjoining lands are mineral in character, or that that in dis-

pute may hereafter by possibility develop minerals in such quantity as will establish its mineral rather than its agricultural character, but that, as a present fact, it is mineral in character; and this must appear from actual production of mineral, and not from any theory that it may produce it; * * * nor is it sufficient that the mineral claimant shows that the land is of little agricultural value. He must show affirmatively, in order to establish his claim, that the mineral value of the land is greater than its agricultural value." (Dughi v. Harkins, 2 L. D. 721, quoted and approved in Davis v. Weibbold, 139 U. S. 508, 522.)

The land must be known not only to be mineral, but to be valuable for mineral.

"The exceptions of mineral lands from * * * grants to States for universities and schools * * * are not held to exclude all lands in which minerals may be found, but only those where the mineral is in sufficient quantity to add to their richness and to justify expenditure for its extraction, and known to be so at the date of the grant." Davis v. Weibbold (139 U. S. 507, 519), approved in Burke v. Southern Pacific (234 U. S. 669, 700).

Under this definition of our Supreme Court was section 16 in this same township "known mineral land" in 1903? Three dry holes have been drilled on that section.

The surveyor general's mineral return

In the discussion yesterday we pointed out that the Surveyor General's mineral return was based on the erroneous assumption that the well-known asphaltum outcroppings of the adjoining township occur in this township. It is an undisputed fact that we meant the adjoining township.

A surveyor general's mineral return does not establish
175 the character of the lands. It is of little weight and scarcely informative. (State of Utah, 32 L. D. 117; State of California, 39 L. D. 158.)

"It is well settled that the return of the surveyor general as to the character of the land constitutes but a small element of consideration when the question as to the true character of the land is at issue." (Kincade v. California, 39 L. D. 491, 494; Barden v. N. P. Railroad, 154 U. S. 288.)

Considerations were urged yesterday in opposition to this argument:

First. That the Navy had asked for a hearing as to the mineral character of the land at the date of the survey.

Second. That the Buena Vista cases were to be considered.

Third. That the Supreme Court had decided in the Elk Hills case that this was mineral land in 1904.

First. We are not asking for a dismissal of the proceedings now pending in the Land Office. We are asking the department to decide that the proceedings should be closed on the ground that: (a) The previous adjudication of the nonmineral character of the land, made seventeen years ago, upon which the State acted in selling the land twelve years ago, determined its character in favor of the State and its bona fide grantees. (b) At the date of the survey in

1903 the doctrine of the Diamond Coal & Coke case decided in 1914 and of the Elk Hills case was not applicable to this section; that as a section in place title to this section vested under the prevailing rules and decisions of the department, no mineral having been discovered on the section in place; that this became and is the rule of property for this case.

176 The Supreme Court of the United States has repeatedly held that long standing rulings of the Land Department and the construction of the Land Department in respect to granting statutes become a rule of property. (Barden v. Northern Pacific, 154 U. S.; Daniels v. Wagner, 237 U. S. 547; California v. Desert Co., 243 U. S. 415.)

This was also declared in Central Pacific v. Valentine (11 L. D. 238), a decision of this department, which was quoted with approval in the case of Wyoming v. United States, decided at the present term of the Supreme Court, March 28, 1921. In the Wyoming case the court referred to the practice of the department by which the character of railroad lands was determined as of the date of patent, The court said that this was an exception to the general rule as to the time as of which the character of the land is to be determined. The Supreme Court quoted the language of Secretary Noble in the Valentine case:

"This practice, having been uniformly followed and generally accepted for so long a time, there should be, in my judgment, the clearest evidence of error, as well as the strongest reasons of policy and justice controlling, before a departure from it should be sanctioned. It has, in effect, become a rule of property."

There is no reason why this decision as to the title of the State should not be made now without putting the State to the enormous and costly burden of proof, such as was in issue in the Elk Hills case. In other words, if the absence of clear proof of the mineral character of the section in 1903 in the shape of discovery of mineral was sufficient to characterize the land as nonmineral under the regulations and repeated decisions of the department, it will make no difference that by the application of the principles of the Elk Hills case it could be successfully shown that the land within the reasoning of that decision was believed to be mineral land.

177 The difference between the construction of railroad grants and school land grants was emphasized in Wyoming v. United States and the court remarked that "this court has recognized that the legislation of Congress designed to aid the common rules of the States is to be construed liberally rather than restrictively."

Railroad grants on the other hand the court said must be strictly construed. Furthermore, the court said that "the long-prevailing construction and practice of the Land Department ought not to be disturbed."

Certainly the equities of this situation entitle us to a decision now on the question which in any event will ultimately have to be decided by the Secretary of the Interior. The issue which we now tender can be decided just as well at this time as at the end of a protracted hearing on the facts. The fact that the land was tendered when its character was unknown in 1916 to the Government, the long lapse of time since the approval of the survey, the determination of

the nonmineral character of the land by the department, the sale by the State of the land in reliance on that determination, the many years thereafter in which no claim adverse to the State was brought to its attention, although an adverse proceeding was ordered and allowed to lie dormant for seven years, the fact that without objection the purchasers from the State were allowed to develop the land, the proceedings slumbering for seven years on top of ten years after the survey—these facts, I submit, offer equities which entitle the State to ask that the Secretary of the Interior should exercise his clear jurisdiction and decide the question presented at this time.

Second. The Buena Vista cases are not involved in this argument. Apart from the fact that the questions therein involved
178 are to be determined with reference to a date after the rule of the land office was changed in 1905, there is also the fact that in those cases the applicants will be put to proof of good faith and nonmineral character according to their belief—similar to the situation of the Elk Hills case. No such issues arise here.

Third. Nor are we asking the department to make a ruling which is at variance with the Elk Hills decision. Whatever force the findings of fact in that case may have in a case that is free of fraud, this case is, in no event, within the scope of the Elk Hills decision. The determination by the department in 1904 of the land as nonmineral may have been only evidence in favor of the railroad in that case, and very slight evidence under the peculiar circumstances of the case; in our case, we submit, it was an adjudication.

The court in the Elk Hills case said that the Ryan report could not help the railroad because "the agent's report was made in another connection," and that connection, I submit, was precisely the ex parte determination by the department of the character of the land for cases where such ex parte determination is the only determination possible.

Furthermore, the railroad was selecting lands which it was obliged to prove were nonmineral lands. We are seeking to sustain a title according to land office tests in force at the time prescribed for school sections in place. In the Elk Hills case the railroad as applicant had the burden of proving that the land was nonmineral. In this case the Government must prove that the land was mineral. According to the tests and regulations of the Government itself that proof is not possible, and therefore we respectfully submit it should be decided that the State title to this section is valid.

179 Because it is a school section in place which under the regulations and decisions of the department in force at the time passes to the State upon approval of the survey and was found not to be mineral land.

Our request should be considered now as if made in 1904 after restoration of land to entry. How long would we have lasted in this department if in 1903, under the rulings of the department and its regulations and the adjudication that this was nonmineral, we had attempted to tender this section as a mineral section? We submit the application would have been considered frivolous. And yet this application must be considered as it would have been treated had it been submitted in the year 1903.

To simplify this presentation, I have attempted to eliminate from the foregoing statement conclusions of law, or statements of fact which do not meet with the concurrence, as I understand it, of the honorable First Assistant Secretary. On these points I have endeavored to avoid argument.

Very respectfully submitted.

OSCAR SUTRO,
Attorneys for Purchasers from State of California.

WASHINGTON,
May 26, 1921.

180 EXHIBIT 6

MAY 26, 1921.

The honorable SECRETARY OF THE INTERIOR,
Washington, D. C.

DEAR SIR: I hand you herewith written memorandum of the matters stated in your office yesterday, accompanied by a map showing the state of development of the territory in question at the date of the survey of the section in question. While the map is dated 1902, the conditions were practically the same in 1903. I have maps as of that date, but they show nothing further than the one presented herewith.

Please excuse the somewhat ill-considered argument of this memorandum, but I am sure that, from your own experience, you will sympathize with the difficulties of a hasty preparation away from one's own office.

Very respectfully yours,

181 EXHIBIT 7

File D. D. C. 6/13/21.

THE SECRETARY OF THE INTERIOR,
Washington, May 28, 1921.

Mr. Riter: Mr. D. asks that you attend this meeting. Gibbs.

DEAR MR. ATTORNEY GENERAL: The Standard Oil Company and the Pan American Oil Company, owners of land in section 36, naval reserve No. 1, California, have asked to be heard orally in the matter of proposed proceeding by the Government to determine whether or not said section passed to the State of California under its school grant. Secretary Fall has agreed to hear them at two p. m. Wednesday, June 8, 1921, and will be glad to have representatives of the Department of Justice present at that time if you so desire.

Respectfully,

C. V. SAFFORD,
Administrative Assistant.

June 14, 1921.
The honorable the ATTORNEY GENERAL.

214369–9.

182 EXHIBIT 8

DEPARTMENT OF THE INTERIOR,
Washington, June 3, 1921.

The honorable the ATTORNEY GENERAL.

DEAR MR. ATTORNEY GENERAL: Referring to proceedings instituted relative to sec. 36, T. 30 S., R. 23 E., M. D. M., California, claimed by the Standard and Pan American Oil Companies through purchase from the State of California, the Secretary has agreed to hear representatives of the said companies orally on June 8 at 2 p. m., and would be glad if you could have a representative present.

Respectfully,

(Signed) E. C. FINNEY,
First Assistant Secretary.

183 EXHIBIT 9

MAY 28, 1921.

DEAR MR. SECRETARY: The Standard Oil Company and the Pan American Oil Company, owners of land in section 36, naval reserve No. 1, California, have asked to be heard orally in the matter of proposed proceeding by the Government to determine whether or not said section passed to the State of California under its school grant. Secretary Fall has agreed to hear them at two p. m., Wednesday, June 8, 1921, and will be glad to have representatives of the Navy Department present at that time if you so desire.

Respectfully,

(Signed) C. V. SAFFORD,
Administrative Assistant.

The honorable the SECRETARY OF THE NAVY.

184 EXHIBIT 10

DEPARTMENT OF THE INTERIOR,
Washington, June 3, 1921.

The honorable the SECRETARY OF THE NAVY.

DEAR MR. SECRETARY: Referring to proceedings instituted relative to sec. 36, T. 30 S., R. 23 E., M. D. M., California, claimed by the Standard and Pan American Oil Companies through purchase from the State of California, the Secretary has agreed to hear representatives of the said companies orally on June 8 at 2 p. m., and would be glad if you could have a representative present.

Respectfully,

(Signed) E. C. FINNEY,
First Assistant Secretary.

185 EXHIBIT 11

SUPERVISORY POWER OF SECRETARY

RULE 85. Motion for the exercise of supervisory power will be considered only when accompanied by positive showing of extraor-

dinary emergency of exigency demanding the exercise of such authority.

In proceedings before the Secretary of the Interior the same rules shall govern, in so far as applicable, as are provided for proceedings before the Commissioner of the General Land Office.

RULE 86. No rule here prescribed shall be construed to deprive the Secretary of the Interior of any direct or supervisory power conferred upon him by law.

186 EXHIBIT 12

"N" 162997.

GENERAL LAND OFFICE,
DEPARTMENT OF THE INTERIOR,
Washington, D. C., September 8, 1908.

Address only the Commissioner of the General Land Office.

The honorable the SECRETARY OF THE INTERIOR.

SIR: I am in receipt, from the department, of letter of the Acting Director of the U. S. Geological Survey, dated August 25, 1908, requesting the temporary withdrawal from homestead entry of the lands covered by a map of the McKittrick-Sunset oil district, California, excepting, however, certain lands shown on the map which are in a part of the Coalings oil district and were classified as oil lands on June 17, 1908.

It appears that the lands for which the withdrawal is requested are in Kern and San Luis Obispo Counties, California, and adjoin on the south the lands in the Coilings oil district in Fresno and King Counties, California, which were withdrawn under departmental order of August 15, 1907.

On June 17, 1908, this office was in receipt of a report from the Director of the U. S. Geological Survey, classifying as oil lands certain of the lands included in the withdrawal of August 15, 1907, and opening up others to entry.

The acting director refers to the portion of said report of June 17, 1908, in which it is stated that the lands classified therein are believed to be those which future development will prove to
187 more or less oil bearing as his reason for recommending the withdrawal of the lands in the McKittrick-Sunset oil district.

I would respectfully recommend that the lands be temporarily withdrawn from agricultural entry, pending their examination and classification by the U. S. Geological Survey.

A list of the lands for which the withdrawal is requested is herewith attached.

Very respectfully,

(Signed) FRED DENNETT, *Commissioner.*

Approved September 14, 1908.

(Signed) FRANK PIERCE,
First Assistant Secretary.

	T.		R.	
All	25 S.	17, 18, 19, 20, 21	E., M.	D. M.
All	26 "	17, 18, 19, 20, 21	" "	" "
All	27 "	17, 18, 19, 20, 21	" "	" "
All	28 "	17, 18, 19, 20, 21	" "	" "
Secs. 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, 31, 32.	28 "		" "	" "
All	29 "	17, 18, 19, 20, 21, 22, 23.	" "	" "
All	30 "	17, 18, 19, 20, 21, 22, 23, 24, 25.	" "	" "
Secs. 28, 29, 30, 31, 32, 33	30 "	25	" "	" "
All	31 "	17, 18, 19, 20, 21, 22, 23, 24.	" "	" "
W. ½	31 "	25	" "	" "
All	32 "	17, 18, 19, 20, 21, 22, 23, 24, 25.	" "	" "
Secs. 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34.	32 "	26	" "	" "
All	11 N.	22,23,24, 25, 26, 27.	W., S. B.	M.
All	12 "	22,23,24, 25, 26, 27.	" "	" "

188 EXHIBIT 13

DEPARTMENT OF THE INTERIOR,
UNITED STATES GEOLOGICAL SURVEY,
Washington, June 4, 1909.

The COMMISSIONER,
General Land Office.

SIR: Part of the lands in the McKittrick-Sunset oil districts, California, withdrawn from entry by the Secretary on September 14, 1908, pending examination and classification by the Geological Survey, have been examined, and I classify the following lands within the withdrawn area as oil lands:

LANDS CLASSIFIED AS OIL LANDS

(Mt. Diablo base and meridian)

* * * * * * *

All of T. 30 S., R. 23 E. (and other lands), aggregating 407,118 acres of land in California.

The lands classed as oil lands, the areas found not to be oil lands, and the area in which field work is now being done and which should remain withdrawn are shown graphically on the accompanying map.

Respectfully,

(Signed) GEO. OTIS SMITH, *Director.*

189 EXHIBIT 14

DEPARTMENT OF THE INTERIOR,
Washington, June 7, 1909.

Address only the Secretary of the Interior.

The DIRECTOR OF THE GEOLOGICAL SURVEY,
Washington, D. C.

SIR: I am in receipt of your letter of June 4, 1909, enclosing lists of lands in California heretofore withdrawn for classification, 430,340

acres of which you have classified as oil land and 544,480 as not containing deposits of oil.

* * * * * * *

The withdrawal of the lands classified as containing deposits of oil in the lists accompanying your said letter will be continued temporarily pending consideration of legislation upon the question, unless it is shown by reclassification, or sufficient evidence, that any particular tract or tracts thereof do not in fact contain deposits of oil. The lands classified in the lists as nonmineral will be restored to the public domain for disposition under the public land laws appropriate thereto.

Very respectfully,

R. A. BALLINGER, *Secretary.*

NOTE.—Sec. 36, T. 30 S., R. 23 E., M. D. B. & M., included in the list of 430,340 acres of land classified as oil land as above set forth.

190 EXHIBIT 15

101960.

DEPARTMENT OF THE INTERIOR,
UNITED STATES GEOLOGICAL SURVEY,
Washington, September 27, 1909.

The honorable the SECRETARY OF THE INTERIOR.

SIR: In accordance with your orders I have the honor to submit the following recommendation, which covers approximately 3,041,000 acres, of which the larger part is probably private land and not affected by this withdrawal.

TEMPORARY PETROLEUM WITHDRAWAL NO. 5

In aid of proposed legislation affecting the use and disposition of the petroleum deposits on the public domain, all public lands in the accompanying lists are hereby temporarily withdrawn from all forms of location, settlement, selection, filing, entry, or disposal under the mineral or nonmineral public-land laws. All locations or claims existing and valid on this date may proceed to entry in the usual manner after field investigation and examination.

California

(Mount Diablo base and meridian)

T. 30 S., R. 23 E., all of township, together with 2,843,880 acres of other land in California and 174,080 acres in Wyoming.

Very respectfully,

(Signed) H. C. RIZER, *Acting Director.*

Approved September 27, 1909, and sent to General Land Office.

(Signed) FRANK PIERCE, *Acting Secretary.*
E. C. F.

191

Exhibit 16

Department of the Interior,
United States Geological Survey,
Washington, July 1, 1910.

The honorable the Secretary of the Interior.

Sir: In accordance with your instructions I recommend the withdrawal for classification and in aid of legislation affecting the use and disposition of petroleum deposits belonging to the United States of the following areas in the State of California, involving approximately 2,482,750 acres:

ORDER OF WITHDRAWAL.

Petroleum reserve No. 2

It is hereby ordered that those certain orders of withdrawal made heretofore,

On Sept. 27, 1909, and described as temporary petroleum withdrawal No. 5,
On Oct. 30, 1909, and described as temporary petroleum withdrawal No. 8,
On Nov. 16, 1909, and described as temporary petroleum withdrawal No. 9,
On Jan. 18, 1910, and described as temporary petroleum withdrawal No. 11,
On Feb. 2, 1910, and described as temporary petroleum withdrawal No. 12,

in so far as the same include any of the lands hereinafter described, be, and the same are hereby, ratified, confirmed, and continued in full force and effect; and subject to all of the provisions, limitations, exceptions, and conditions contained in the act of Congress entitled "An act to authorize the President of the United States to make withdrawals of public lands in certain cases," approved June 25, 1910, there is hereby withdrawn from settlement, location, sale, or entry, and reserved for classification and in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States, all of those certain lands of the United States set forth

192 and particularly described as follows, to wit:

Mt. Diablo meridian, California

T. 30 S., R. 23 E., all of township, together with 2,459,710 acres of other land in California.

Very respectively,

Geo. Otis Smith, *Director.*

July 1, 1910.

Respectfully referred to the President with the recommendation that same be approved.

R. A. Ballinger, *Secretary.*

Approved July 2, 1910, and referred to the Secretary of the Interior.

Wm. H. Taft, *President.*

Referred to the Commissioner of the General Land Office for appropriate action.

Frank Pierce, *Acting Secretary.*

193 EXHIBIT 17.

ORDER OF WITHDRAWAL

Naval petroleum reserve No. 1

It is hereby ordered that all lands included in the following list and heretofore forming a part of petroleum reserve No. 2, California No. 1, withdrawn on July 2, 1910, from settlement, location, sale, or entry, and reserved for classification and in aid of legislation under the authority of the act of Congress entitled "An act to authorize the President of the United States to make withdrawals of public lands in certain cases (36 Stat. 847), shall hereafter, subject to valid existing rights, constitute naval petroleum reserve No. 1, and shall be held for the exclusive use or benefit of the United States Navy until this order is revoked by the President or by act of Congress. To this end and for this public purpose, the order of July 2, 1910, is modified and the withdrawal of that date is continued and extended in so far as it affects these lands.

Mt. Diablo meridian

T. 30 S., R. 22 E., sec. 24, all.
T. 30 S., R. 23 E., sec. 10, all;
secs. 12 to 30, inclusive;
secs. 32 to 36, inclusive.
T. 31 S., R. 23 E., secs. 1 to 4, inclusive;
secs. 10 to 14, inclusive.
T. 30 S., R. 24 E., secs. 17 to 20, inclusive;
secs. 28 to 34, inclusive.
T. 31 S., R. 24 E., secs. 1 to 12, inclusive;
sec. 18, all.

(Signed) WM. H. TAFT, *President.*

SEPT. 2, 1912.

194 *Opinion*

Filed July 28, 1926

* * * * * * *

SMITH, Associate Justice:

The bill of complaint, the answer, the rule, and the agreed statement of facts require this court to determine whether title to section 36 of township 30 south, range 23 east, Mount Diablo base and meridian, passed to the State of California on the 26th of January, 1903, by virtue of sections 3, 6, and 7 of the act of March, 1853. Said act is as follows:

"SEC. 3. * * * That the said surveyor general shall have the same power and authority, and perform the same duties respecting the public lands and private claims in the State of California, as by law appertain to and are required of the surveyor general in Louisiana, except so far as the same may be modified by this act. He shall engage a sufficient number of skilful surveyors as his

deputies, whom he shall cause to survey, measure, and mark base and meridian lines through such points, and perpetuated by such monuments, and such other correction parallels and meridians as may be prescribed, and also to survey and establish the other lines of the public lands. * * * Provided, That none other than township lines shall be surveyed when the lands are mineral or are deemed unfit for cultivation.

"SEC. 6. * * * That all the public lands in the State of California, whether surveyed or unsurveyed, with the exception of sections sixteen and thirty-six, which shall be and hereby are granted to the State for the purposes of public schools in each township,
195 and with the exception of lands appropriated under the authority of this act, or reserved by competent authority, and excepting also the lands claimed under any foreign grant or title and the mineral lands, shall be subject to the preemption laws of fourth September, eighteen hundred and forty-one, * * * and shall, after the plats thereof are returned to the office of the register, be offered for sale, after six months' public notice in the State of the time and place of sale, under the laws, rules, and regulations now governing such sales, or such as may be hereafter prescribed: * * *

"SEC. 7. * * * That where any settlement, by the erection of a dwelling-house or the cultivation of any portion of the land, shall be made upon the sixteenth and thirty-sixth sections, before the same shall be surveyed, or when such sections may be reserved for public uses or taken by private claims, other land shall be selected by the proper authorities of the State in lieu thereof, agreeably to the provisions of the act of Congress approved on the twentieth of May, eighteen hundred and twenty-six, entitled 'An act to appropriate lands for the support of schools in certain townships and fractional townships, not before provided for,' and which shall be subject to approval by the Secretary of the Interior. And no person shall make a settlement or location upon any tract or parcel of land selected for a military post, or within one mile of such post, or on any other lands reserved by competent authority; nor shall any person obtain the benefits of this act by a settlement or location on mineral lands."

THE BILL.

The bill of complaint alleges in Paragraphs III, IV, V, VII, and VIII, that the survey of section 36, township 30 south, range 23 east, Mount Diablo base and meridian, was completed on December 20, 1901, as prescribed by the act of 1853; that the plat of the survey was approved by the surveyor general on August 1, 1902, accepted by the Commissioner of the General Land Office on January 26, 1903, and filed in the United States local land office at Visalia, California, on May 16, 1903; that at the time of the acceptance and filing of said plat the 16th and 36th school sections were not deemed to be of
196 mineral character unless mineral had been discovered thereon; that the regulations of the Department of the Interior, dated March 6, 1903, specifically provided that whether school sections were returned by the surveyor general as mineral or otherwise, the

State would not be permitted to select lands in lieu of such school sections in the absence of satisfactory proof that the base land was known to be chiefly valuable for mineral at the date when the State's right thereto attached, if at all; that by its said regulations the Interior Department required proof of the kind of mineral discovered, the extent thereof, and the names of the discoverers, and until such proof was made the department declined to permit the State to select lands in lieu of the school sections granted to it by Congress; that on the 28th of February, 1900, the Commissioner of the General Land Office directed the register and receiver at Visalia, California, to suspend from disposition until further ordered about twenty townships, including said township 30 south, range 23 east, Mount Diablo base and meridian; that on the 19th of July, 1900, he continued said order of suspension in force for a reasonable time pending inquiry as to the true character of the land; that thereupon an agent of the land office was directed to examine and report upon the character of the lands under suspension; that on the 22nd of March, 1904, the special agent made a report to the Commissioner of the General Land Office at Washington in which he stated that no wells had been bored for oil in township 30 south, range 23 east, and that in his opinion all the lands in that township should be relieved from further suspension;
that on that report of the special agent and on April 5,
197 1904, the Commissioner of the General Land Office found that no good reason existed for further suspension as to township 30 and relieved that township from the suspension theretofore ordered; that section 36 of said township 30 is a part of the lands known as Elk Hills and that no oil was at any time discovered in Elk Hills until after the year 1910; that the oil structure of Elk Hills as determined by explorations conducted subsequent to the year 1910 is a separate and distinct construction and wholly independent of any other oil field; that no oil was discovered in any portion of township 30 south, range 23 east, prior to the acceptance of the plat of survey on January 26, 1903, by the Commissioner of the General Land Office, and that there was no mineral developed whatever in said township prior to 1911; that on the 3rd of January, 1901, Alice J. Miller applied to the State of California for a certificate of purchase of section 36, township 30 south, range 23 east, Mount Diablo base and meridian, and paid on the issuance thereof the sum of $160, the initial payment required to be made by the laws of California upon the purchase of school lands; that on the 2nd of July, 1902, the right, title, and interest acquired by Alice J. Miller under her certificate of purchase was sold to the State of California for delinquent taxes, penalties, costs, and charges amounting to the sum of $3.28; that on the 2nd of July, 1907, pursuant to said tax sale, a deed to her interest in said section 36 was made to the State of California, which deed was filed with the surveyor general of the State on September 28, 1907; that on the 25th of August, 1908, George Hay and M. W. Buffington redeemed
198 section 36 by paying the delinquent taxes, penalties, costs, and charges, and because of said redemption said section under the laws of California again became subject to purchase from the State; that on the 24th of August, 1908, George Hay made

application to purchase the west half and the west half of the east half of said section 36 for the sum of $1.25 per acre; that the west half and the west half of the east half of the section contained 480 acres and that a certificate of purchase therefor was issued by the State of California to said George Hay on January 5, 1909; that Hay paid $1.25 per acre, the purchase price of said land, and on the 29th of November, 1909, sold his interest to Oscar Sutro for the sum of $11,000; that on January 31, 1910, the State of California issued its patent to said Oscar Sutro for said 480 acres, and thereupon said Sutro executed his deed therefor to plaintiff; that on August 24, 1908, M. W. Buffington applied to the surveyor general of the State of California to purchase lots 1, 2, 5, 6, 7, 8, 11, and 12 in section 36, and on the 5th of January, 1909, a certificate of purchase to said lots was issued to him, whereby he acquired the right to complete the purchase of said land and the right to receive a patent therefor upon making the payments required by law; that on August 21, 1909, Buffington agreed to sell to F. J. Carman lots 5, 6, 7, 8, 11, and 12 of section 36 for the sum of $3,180 upon the issuance of a patent therefor by the State of California; that on the 20th of January, 1910, the State of California issued its patent to Buffington for lots 1, 2, 5, 6, 7, 8, 11, and 12 of said section, and

Buffington on January 25, 1910, in accordance with his
199 agreement with Carman, conveyed to the latter, by deed, lots 5, 6, 7, 8, 11, and 12, whereupon an undivided one-half interest in the lots so conveyed was deeded by Carman to G. O. Fairbank; that on the 25th of May, 1919, Carman and Fairbank, in consideration of the sum of $100,000 to them paid by plaintiff, entered into a contract with plaintiff for the development of the lots conveyed to them and for the sharing of the net proceeds of oil and gas produced by said development; that under the agreement with Carman and Fairbank plaintiff entered into the possession of the lots covered by the agreement and complied with all the terms of its agreement; that the plaintiff is now and ever since the 31st day of January, 1910, has been the owner and in the possession of the west half and the west half of the east half of said section 36; that since the 25th day of May, 1919, plaintiff has been in the possession of the lots which were the subject of the agreement between it and Carman and Fairbank; that on January 24, 1908, and prior to the purchase of section 36 by plaintiff's predecessors in interest, the United States land office at Visalia, California, certified to the surveyor general of the State of California that there was no homestead preemption or other claim to section 36 adverse to that of the State of California; that nearly nine years after acquiring the west half and the west half of the east half of section 36 the plaintiff after drilling to a depth of 2,532 feet discovered oil in that part of the section just mentioned; that the oil so discovered was the first discovery of mineral in section 36; that on January 14, 1914, the United
200 States land office at Visalia was instructed by the Commissioner of the General Land Office at Washington to institute adverse proceedings in respect to section 36 on the ground that the land was mineral in character, contained valuable deposits of petroleum, and was of nonmineral character at and prior to the survey

thereof on December 20, 1901; that no copies of the charges were ever served upon any of the parties interested in section 36 and that no notice of said charges was given to any of said parties until October 12, 1917, when the Commissioner of the General Land Office asked for a list of contests pending in respect to public lands in California involving the question of the petroleum character of said lands; that on November 26, 1917, the United States land office at Visalia, California, informed the Commissioner of the General Land Office of the pendency of said charges as to the mineral character of said section 36; that in the month of March, 1921, the Secretary of the Interior recommended to the Attorney General of the United States that appropriate action be taken through the courts for the protection of the interests of the Government of the United States, pending final action on the charges and proceedings commenced in the United States land office at Visalia, in accordance with the instructions issued by the Commissioner of the General Land Office at Washington on the 14th of January, 1914; that in March, 1921, the Commissioner of the General Land Office directed the chief of the field division of California to furnish the register and surveyor of the United States land office at Visalia the names and addresses of all parties interested in section 36 and to carry on adverse proceedings for the determination of the
201 mineral character of said section; that in May, 1921, the plaintiff and other persons interested in section 36 made application to the Secretary of the Interior to exercise his jurisdiction and to dismiss the charges pending in the United States land office at Visalia on the ground that section 36 was a school section, the title to which vested in the State of California on the 26th of January, 1903, the date of the approval of the survey; that on May 28, 1921, the Secretary announced that he would hear on June 8, 1921, the application for dismissal of the charges, due notice of which hearing was given to the Department of Justice, the Department of the Navy, and the General Land Office and to all parties interested in section 36; that on the 8th of June, 1921, there were present at the hearing the Secretary of the Interior, the Assistant Secretary of the Interior, E. H. Hammel, representing the General Land Office; E. D. Caldwell, First Assistant Attorney General of the Department of Justice, representing the United States Navy; Commander H. A. Stuart, representing the Bureau of Steam Engineering of the United States Navy; H. L. Underwood, Solicitor of the Department of Justice, and by counsel this plaintiff and other owners of portions of section 36; that at said hearing all of the facts alleged in Paragraphs III, IV, V, VII, and VIII of the bill were admitted by the parties present to be true and correct and submitted to the Secretary of the Interior; that the Secretary of the Interior on June 8, 1921, on the conclusion of the hearing, ordered a dismissal of the charges and contest filed; that on the 9th of June, 1921, the First Assistant Secretary of the Department of the
202 Interior by letter directed the Commissioner of the General Land Office to dismiss the proceedings against the State of California and its proceedings against the transferees as to sections 16 and 36 of said township 30; that the Commissioner of the General Land Office on the 13th of June, 1921, forwarded a copy of the

departmental letter of June 9, 1921, to the United States land office at Visalia and ordered the land office to close the case upon its records and to notify the parties in interest of the dismissal; that the Assistant Secretary of the Interior formally notified the Attorney General of the United States that the adverse proceedings commenced in January, 1914, were after a consideration of the law and the facts dismissed by the Secretary of the Interior; that no appeal from the dismissal of the adverse proceedings was ever taken and that no application for a rehearing of such proceedings was ever made; that the time for taking such appeal or for making such application expired long prior to June 25, 1925; that on May 8, 1925, nearly four years after the adverse proceedings had been dismissed by order of a former Secretary of the Interior, the defendant, Hubert Work, as Secretary of the Interior, reversed, vacated, and set aside the order of the former Secretary of the Interior dismissing said adverse proceedings, on the ground, 1st, that the land was returned as mineral in character by the surveyor in 1902, reported by inspectors and special agents of the Interior Department as mineral in character, and was so known at and prior to the date of the acceptance of the survey in January, 1903; 2nd, that said land was withdrawn as mineral by the United States in
283 1909 and included in the naval reserve in 1912; 3rd, that although a hearing was twice ordered to determine whether the land was mineral or nonmineral, no hearing was had and no evidence submitted; 4th, that a prior Secretary of the Interior had dismissed the adverse proceedings on a legal argument presented by the attorney for the Standard Oil Company et al. without taking any evidence as to the character of the land on the date of the approval of the survey and without argument on behalf of the Government of the United States; 5th, that as a prerequisite to the disposition of the land it was and is the statutory duty of the Secretary of the Interior to determine the character of the land and whether or not it was reserved to the United States as mineral; that the Secretary of the Interior directed the register and surveyor of the United States land office at Visalia to notify the State of California, the plaintiffs, and others claiming title to section 36 of the action taken by him; that because of said order of the defendant the register of the United States land office at Visalia, on July 28, 1925, notified plaintiffs and other parties in interest of the charges that section 36 was mineral in character and was known as such at and prior to the date of the acceptance of the plat of the surveyor of the General Land Office on January 26, 1903; that the register of the Visalia land office required the plaintiffs and others in interest to make written or printed answer under oath to said charges and either to deny them or establish a state of facts rendering said charges immaterial, and that for a failure to so appear and answer, the entry
284 or claim of the plaintiff and other parties in interest would be reported to the Commissioner of the General Land Office for rejection or cancellation; that on August 4, 1925, plaintiff filed with the defendant a plea in bar to the jurisdiction of the Secretary to order said hearing and prayed that the order for a hearing be suspended until the determination of its plea in bar; that the defendant declined to entertain the plea in bar and refused to set aside, modify, or suspend his order directing a hearing.

THE ANSWER

The defendant made answer to the bill of complaint and therein averred, 1st, that the lands involved in the bill were public lands of the United States; 2nd, that the geological formations, physical conditions, and other indications apparent upon said section 36 and the adjacent lands at the time of the survey were of such a character as to disclose the fact that said section 36 was mineral land and contained oil in such quantity and of such quality as would render its extraction profitable and justify exploitation; 3rd, that the hearing before the Secretary of the Interior on June 8, 1921, was simply an informal proceeding, for the purpose of listening to the legal argument of the attorneys for the plaintiff upon its request for the dismissal of the charges against section 36 and not for the purpose of taking or considering evidence upon any question of fact as to the mineral or nonmineral character of section 36 in January, 1903; 4th, that none of the persons named in the complaint as represented at that hearing was informed or understood
295 that evidence as to the mineral character of section 36 was to be presented or considered, and that no competent or legal evidence whatever as to the character of the land was presented or considered at said hearing and that nothing was considered other than the informal unsworn statement of plaintiff's attorney and his argument; 5th, that no presentation of its claim was made by the Government and that there was no adjudication of the questions of fact involved; 6th, that the decision of the former Secretary of the Interior at said hearing was based upon the assumption that the land in question had been adjudicated as nonmineral by the Department of the Interior, and that that assumption was due to a mistaken view of the law; 7th, that the Attorney General's office, the Navy Department, and the Department of Justice had no authority to represent and did not represent the United States at said hearing or in the decision of any issue of fact and that the Department of the Interior had sole and exclusive jurisdiction to determine all questions of fact relating to the known mineral character of section 36; 8th, that any admissions made at said hearing related solely to the facts disclosed by the official files and records of the Department of the Interior; 9th, that the lands in section 36 were returned as mineral lands by the surveyor who surveyed the same, and that the plat and field notes of said survey disclosed that said section was mineral in character; 10th, that said plat and field notes filed in the office of the United States surveyor general in the State of California and in the office of the Secretary at Washington, D. C., were official public records, which charged all persons with notice and
296 knowledge of the same; 11th, that, due to the known mineral character of section 36 at the time of the approval of the survey, the State of California had the right to sell in lieu thereof other public lands that were nonmineral; 12th, that on March 7, 1903, the State of California filed in the United States land office at Visalia its application numbered R. & R., No. 792, to take section 6, township 44 north, range 3 east, M. D. B. & M., in place of mineral section 36, township 30 south, range 23 east, M. D. B. & M.; that subsequently, on August 15, 1905, the State asked leave to amend that

application by inserting therein section 16, township 10 north, range 5 east, B. H. M., instead of said section 36, township 30; that on December 18, 1909, the Commissioner of the General Land Office disallowed the application of the State of California on the ground that the new lands applied for had been covered by a prior application; 13th, that township 30 and said section 36 were withdrawn from agricultural entry on September 14, 1908, by departmental order pending classification thereof by the United States Geological Survey, and that said township was classified as mineral land on June 4, 1909, which classification was approved by the Secretary of the Interior on June 7, 1909; 14th, that at all the times mentioned in the bill of complaint it was the long established and well recognized and controlling practice of the Department of the Interior to determine the character of public lands in contested cases, after a hearing or trial, at which all parties in interest might present testimony, subject witnesses to examination and cross-examination, and argue the case.

207 THE ANSWER DENIED

1st, that the plaintiff had any right to section 36 or to any part thereof; 2nd, that the title to said section 36 vested in the State of California on January 26, 1903, or at any other time; 3rd, that the Commissioner of the General Land Office ever determined that section 36 was nonmineral; 4th, that oil was not discovered on any portion of said township 30 prior to January 26, 1903, and that there was no mineral development in said township prior to 1911; 5th, that no oil was ever discovered at any time in Elk Hills until subsequent to the year 1910, and that the oil structure of Elk Hills is or was a separate or distinct structure or independent of any oil field; 6th, that at the hearing before the Secretary of the Interior on June 8, 1921, any admissions were made or intended to be made by any representative of the Government concerning the known mineral character of section 36 in January, 1903; 7th, that the decision of the Secretary of the Interior on June 8, 1921, was a final adjudication or judgment as to the known nonmineral character of the land in said section 36 on the date of the approval of the survey thereof.

Plaintiff on filing its bill applied for an injunction pendente lite, and that application was denied on the bill and answer thereto by the chief justice of this court on the ground, 1st, that the Secretary of the Interior lacked jurisdiction to determine the mineral character of section 36; 2nd, that the order of the Commissioner of the
208 General Land Office, dated April 5, 1904, relieving township 30 of suspension, was not a determination that the lands in that township were not known to be mineral on January 26, 1903; 3rd, that on the facts set up in the answer of the defendant, and which had to be accepted as true for the purposes of the rule to show cause, the question of whether section 36 was mineral or nonmineral was still pending for determination when the defendant ordered a revivor of the adverse proceedings theretofore dismissed by a former Secretary of the Interior and that consequently the court had no right to interfere or to prevent by injunction the prosecution of such proceedings to a conclusion. That ruling by the learned chief

justice must be regarded by me as the law of the case on the record as it stood when the ruling was made. It is contended, however, that the agreed statement of facts upon which the action has been submitted for decision on the merits, presents new matter and questions of law not apparent from the pleadings and consequently not considered by the chief justice.

THE FACTS AS STIPULATED AND AGREED UPON BY THE PARTIES

The lands in issue were returned on the plat and general description attached to the field notes of the official survey as mineral in character. The first discovery of oil in township 30 south, range 23 east, was made in 1911, and the first discovery of oil in section 36 of said township occurred in 1918. The first discovery of oil in
209 the Elk Hill structure took place in 1911. Prior to 1910 no oil had been discovered in any township contiguous to or cornering on township 30, range 23 east, with the exception of township 30 south of range 22 east, in which oil had been produced for many years prior to 1903. Section 28 of township 30 south of range 22 east is eight miles distant from section 36, township 30, range 23 east, and prior to 1910 no oil was discovered in any section nearer to section 36 than said section 28. No contest or proceeding was ever instituted in the General Land Office of the United States or in any court disputing the title of the State of California to section 36 until on or about January 14, 1914, when adverse proceedings were ordered on the report of the field division at San Francisco, which report was dated April 5, 1913. The adverse proceedings charged that section 36 contained valuable products of petroleum and was known to be mineral in character prior to December 20, 1901, which date on March 2, 1921, was amended to read January 26, 1903. No action was taken upon said charges until February 19, 1921, when the attention of the Attorney General of the United States and the Secretary of the Navy was called to the pending contest and to the fact that prompt action should be taken upon the charges officially made. On February 28, 1921, more than 7 years after the contest was commenced, the Secretary of the Navy and the Commissioner of the General Land Office wrote letters, the former directly to the Department of Justice and the latter to the Secretary of the Interior, concerning the pendency of the charges. The letter of the Secretary of the Navy requested and the letter of the commissioner recommended that the Department of Justice take appropriate
210 action through the courts to protect the interests of the Government until the contest had been finally determined.

On March 2, 1921, the Secretary of the Interior wrote to the Attorney General of the United States and informed him that he concurred in the recommendation of the Commissioner of the General Land Office. The Department of Justice took under consideration the recommendation of the Secretary of the Interior and the request of the Secretary of the Navy, with the result that Assistant Attorney General Riter in April, 1921, reached the conclusion that the Department of Justice was without jurisdiction to determine the title to said section 36 or to obtain a determination thereof by thec ourts. The Assistant Attorney General also concluded that the determination of

said title was within the jurisdiction of the Department of the Interior, inasmuch as the vesting of title depended on whether the land was mineral or nonmineral on the date of the approval of the survey thereof. The Department of Justice therefore determined that its efforts to protect the interests of the United States and of the United States Navy should be limited to the institution of proceedings for the appointment of a receiver and for an injunction against the further operation or development of the section pending the determination by the Department of the Interior of the known character of the land on the date of the approval of the survey.

Assistant Attorney General Riter, in charge of public lands and Indian affairs, was of the opinion that proceedings for an injunction and the appointment of a receiver would prejudice the
211 interests of the United States, inasmuch as oil would drain from section 36 into the property of contiguous operators while the injunction was in force and be lost to the Government. J. Crawford Biggs, formerly special counsel representing the Government in litigation involving the title to naval reserves, and Commander H. A. Stuart, of the Navy, entertained the same view. The responsible representatives of the Department of Justice and of the Navy definitely agreed that an injunction or receivership was inadvisable, provided an early hearing in the Interior Department could be had to determine the character of the land. The Department of Justice therefore held that no purpose would be subserved by instituting the proceedings suggested by the Secretary of the Navy and the Secretary of the Interior if the operators on section 36 would agree to refrain from further development thereof. On the 16th, 17th, 18th, 19th, and 20th of May, 1921, the representatives of the transferees conferred with W. D. Riter, Assistant Attorney General, representing the Department of Justice; D. D. Caldwell, Special Assistant Attorney General, in charge of matters affecting the naval reserve; and Commander H. A. Stuart, inspector in charge of naval reserve. During the conferences Mr. Riter, Mr. Caldwell, Commander Stuart, J. Crawford Biggs, and Harry L. Underwood, Assistant to the Attorney General, assigned to Land Office matters, consulted E. E. Finney, First Assistant Secretary of the Department of the Interior, with reference to the matters which were the subject of conference. As the result of the conferences it was formally agreed by the Department of Justice; Assistant Attorney General Riter; D. D. Caldwell,
Assistant Attorney General in charge of matters affecting
212 naval reserves; Commander Stuart, Navy inspector in charge of naval reserves; and the transferees that the transferees would refrain from further drilling of said land and from further development thereof, provided that a speedy determination would be had in the Department of the Interior with respect to the title to section 36. The Department of Justice agreed to take no action for the appointment of a receiver or for an injunction if the transferees would immediately endeavor to secure from the Department of the Interior a determination of the known mineral character of said section 36 and of the title thereto on the date of the approval of the survey thereof. The transferees complied with their agreement not to further drill or develop the land, and the contemplated proceed-

ings to restrain further development were not instituted. In compliance with their agreement the transferees by their representatives presented to the Secretary and the First Assistant Secretary of the Interior a request that the Secretary decide the title to section 36. On May 25, 1921, that request was before the Secretary of the Interior in the presence of the First Assistant Secretary of the Interior, and on May 26, 1921, by permission of the Secretary, a brief was filed in support of the application. That brief called the attention of the Secretary of the Interior, 1st, to the survey of the lands and the approval thereof on January 26, 1903; 2nd, to the order of February 28, 1900, suspending from disposition of township 30, range 23 east, and other townships and portions of townships; 3rd, to the official order of July 19, 1900, continuing that suspension for a reasonable time pending the inquiry as to
213 the true character of the land, which inquiry was then pending; 4th, to the report of the special agent of the department ordered by the Secretary of the Interior to investigate the character of the lands involved, which report stated that township 30 was nonmineral; 5th, to the orders of the commissioner of April 4 and 5, 1905, relieving the lands from suspension, on the ground that no mineral had been discovered therein and that no good reason existed for further suspension; 6th, to the certificate of the State of California made by the United States land office at Visalia, which certificate recited that there was no valid claim against the State's title; 7th, to the hearing before the special joint conference of the Committee on Public Lands of the House, held December 18th and 23rd, 1916, at which a tender to the Navy of naval reserve No. 1 was discussed and the tender declined because the Department of the Navy did not believe the land to be oil land; 8th, to the hearings before the Senate Committee on Public Lands on February 9, 1916, at which Commanders Wright, Richardson, and Landis, of the Navy, testified to the unsatisfactory character of the land as mineral.

On May 28, 1921, after presentation of said brief and argument, the Secretary of the Interior gave written notice to the transferees, to the Attorney General, and to the Secretary of the Navy that the transferees had asked to be heard orally as to whether the title to section 36 passed to the State of California under its grant. The notice stated that the Secretary had agreed to hear the trans-
214 ferees on June 8, 1921, at 2 p. m., and that the Secretary would be glad if the parties notified would have a representative present. In accord with the notice, the matter was heard by the Secretary of the Interior, and there was actually present at the hearing representatives of all the transferees—Mr. Finney, First Assistant Secretary of the Interior; C. D. Hammel, representing the United States Land Office; D. D. Caldwell, Special Assistant Attorney General; Commander Stuart, of the Bureau of Steam Engineering of the Navy; and Harry L. Underwood, special assistant to the Attorney General. Mr. Hammel was connected with the Department of Interior from 1909 to 1915. From 1915 to 1922 Mr. Hammel was special assistant to the Attorney General, assisting in the preparation for trial and the trial of so-called withdrawn oil-land cases in California and Wyoming. He was fully conversant with the contentions of the United States Land Office and with the

law and the facts affecting section 36. He had been connected with, and had actually participated in, a large number of suits instituted by the United States with respect to naval reserves Nos. 1 and 2.

Prior to the hearing he and the Special Assistant Attorney General in charge in California made a detailed review of the facts and legal questions involved in the matter of the adverse proceedings affecting section 36. In February, 1921, he discussed the facts and legal questions involved in the adverse proceedings with the Commissioner of the General Land Office and with the Assistant Attorney General in charge of the work in Washington. Before June 8, 1921, he again discussed them with Assistant Attorney General
215 Riter and with other representatives of the Department of Justice.

Prior to the hearing Assistant Attorney General Riter directed Mr. Hammel to be present at the hearing because of his familiarity with the litigation affecting naval reserve lands and the questions of title involved.

Mr. Finney was familiar with and had knowledge of the contents of the reports of field agents, mineral inspectors, and other reports and records on file in the Department of the Interior relating to said section 36. All statements made by Mr. Finney to the Secretary of the Interior in respect to said section or any matter connected therewith were based upon knowledge derived by him from said reports, records, and files.

No statement or argument made by the representatives of the transferees presented any material fact not disclosed by the record, with the exception of the date when the Standard Oil Company bought the section, or a part thereof, from the State of California or its transferees.

At the hearing before the Secretary on June 8 the transferees contended that it would serve no purpose to take evidence in the local land office for the purpose of determining whether or not section 36 and the land adjacent thereto showed structural and geological conditions indicating that in said section there was oil, which would justify development. With that contention Assistant Secretary Finney disagreed.

The facts presented on June 8, 1921, to the Secretary of the Interior and the facts presented to him in the brief filed with the
216 Secretary of the Interior on May 26, 1921, were prior to said hearing, known to the representatives of the Department of Justice, the Navy Department, the Land Office, the Secretary of the Interior, the First Assistant Secretary of the Interior, and Assistant Attorney General Riter. All of the representatives of the departments of the Government concerned were at the time of the hearing fully informed of the contention of the Land Office of the United States and of the transferees of the State of California and were aware of the questions of law and fact involved in the proceeding heard by the Secretary of the Interior on June 8, 1921.

At the conclusion of the hearing the Secretary of the Interior asked Mr. Finney and other representatives of the Government whether the facts stated by the representatives of the transferees were admitted, and Mr. Finney replied that the statement was substantially correct.

On June 8, 1921, the Secretary of the Interior, after consideration of the law and facts involved, ordered that the adverse proceedings be dismissed, and his decision to that effect was by his direction written by the First Assistant Secretary of the Interior and addressed to the Commissioner of the General Land Office. The decision so written authorized and directed the commissioner to dismiss the proceedings against the State of California and transferees as to sections 16 and 36, to notify all parties in interest of the dismissal, and to close the case upon the records of the General Land Office. That decision was promulgated by the Commissioner of the General Land Office on June 13, 1921, and the Visalia
217 land office was directed by the commissioner to close the case upon its records and to notify all parties in interest of the dismissal.

Mr. Caldwell, Mr. Underwood, and Mr. Hammel made a report of the decision of the Secretary to Mr. Riter, and Mr. Riter understood that the Secretary of the Interior had decided that section 36 was not known to be mineral on the date of the approval of the survey. After the decision of the Secretary of the Interior the Department of Justice took no further steps in the matter.

It was the customary practice of the Department of the Interior in contested cases involving a dispute as to the facts to have such cases heard and tried by the proper officials of the local land office, at which trials all parties might present testimony and examine and cross-examine witnesses under oath. It was never the practice of the Secretary of the Interior to take testimony of winesses on disputed questions of fact, but it was the practice of the Secretary of the Interior to permit presentation to him of pending cases on agreed facts, on facts contained in the records and on documentary evidence, and to render decisions in such cases.

No application for a rehearing was made after the decision of the Secretary of the Interior, and no action with reference thereto was taken by the department until May 8, 1925, when the defendant reversed and vacated the decision of his predecessor in office and ordered a hearing of the charges made in the adverse proceedings dismissed by that decision.

The contracts of purchase of lands in section 36 were made
218 as alleged in the complaint, and the considerations provided by said contracts were paid by the plaintiff and other purchasers.

For the years 1904 to 1907, inclusive, and for the year 1909 the lands in issue were assessed for taxes by the State of California on a valuation of $1.00 per acre. Said lands were assessed on a valuation of $2.00 per acre in 1910, $5.00 per acre in 1911, $25.00 per acre from 1912 to 1918, inclusive, $250.00 per acre in 1919, $1,500 per acre in 1920, and on an average valuation in excess of $4,000 per acre for the years 1921 to 1924, inclusive. In 1925 the lands were assessed on an average valuation in excess of $1,500 per acre. Since the year 1903 the plaintiffs and other transferees have paid to the State of California taxes amounting to the sum of $333,372.64, assessed against their respective portions of section 36, of which sum $23,118.79 represented assessments on improvements.

It is stipulated by the parties that the court will take judicial notice of all regulations, rules, decisions, rules of practice of the Department of the Interior, and that the parties reserve all objections to the relevancy or materiality of the facts agreed upon or admitted.

THE OPINION OF THE COURT

Counsel for the Government contends, 1st, that the rules, regulations, and established procedure of the Department of the Interior require that disputed claims as to the mineral character of public lands must be first heard by the local land office, at which
219 hearing witnesses familiar with the facts and the nature of the land can be examined and cross-examined under oath; 2nd, that the appeals which may be taken from the decision of the local land office to the Commissioner of the General Land Office and from his decision to the Secretary of the Interior must be finally determined by the Secretary on the record made in the local land office, inasmuch as it is not the practice to take testimony before the Secretary and no provision has been made therefor; 3rd, that no notice was given to the Government representatives that the Secretary of the Interior on June 8, 1921, proposed to consider the question of the character of section 36 as it was known in 1903 or to consider the law or facts involved in such a determination, and that even if such notice had been given, no opportunity was afforded for the presentation of evidence by the Government in support of its contention that the section was mineral.

The agreed statements of facts and the contentions of counsel for the defendant call upon the court to determine, 1st, whether prior to a hearing by the local land office of the adverse proceedings the Secretary had jurisdiction to entertain and determine them after a hearing by himself as Secretary of the Interior; 2nd, whether a hearing of the adverse proceedings was had by the Secretary before he dismissed them; 3rd, whether the dismissal ordered by him, and by his direction reduced to writing by the First Assistant Secretary of the department, was a final determination and adjudication that the lands involved in the proceedings were not known to be mineral on January 26, 1903.

220 The Secretary of the Interior is charged with the supervision of all public business relating to public lands, including mines. (Revised Statutes, sec. 441.) The whole business of the Department of the Interior is under his supervision, and he is vested with authority to review, reverse, annul, or affirm all proceedings in the department for the adjustment of private claims to lands. That supervisory authority he may exercise either by direct orders or by review on appeal. True enough, he may by rules, orders, and regulations prescribe the means, manner, and method of exercising his supervisory powers and may delegate to subordinates that which he might do himself. Such rules, orders, and regulations, however, were designed to facilitate, not to hamper, the department in the dispatch of its business, and from that it follows that any delegation of his supervisory powers does not exclude him from their exercise should he so elect. To hold otherwise would relieve him of the responsibility which the statute imposes. When proceedings are commenced af-

fecting titles to lands before the department for determination, the Secretary of the Interior may therefore directly exercise his power over such proceedings whenever in his opinion the public interest requires that course. In brief, if he has formal notice that the rights of the citizen or of the Government will be detrimentally affected by following the usual procedure, he is not bound to wait for trials by subordinates and appeals from their decisions, but may take up the matter himself and dispose of it after hearing the parties in interest. Knight v. United States Land Association, 142 U.
221 S., 161, 177, 178, 181, 182; Lake Superior Ship Canal Co. v. Patterson, 30 L. D. 160.

Even if the Secretary of the Interior were bound to exercise his supervisory authority in the manner prescribed by the rules of the department the taking of jurisdiction of the adverse proceedings by the Secretary without the appeals provided for was in strict accordance with the rules then in force. Rule 85 clearly recognized that in case of extraordinary emergency or exigency the Secretary might exercise his supervisory power, and rule 86 prescribed in terms that none of the rules shall be construed so as to deprive the Secretary of the Interior of any direct or supervisory power conferred upon him by law. More than that, it is admitted by the agreed statement of facts that, while it has not been the practice of the Secretary of the Interior to take testimony on disputed issues of fact, it has been his practice to permit the presentation to him of pending cases and to decide them on agreed statement of facts, the records of his office, and documentary evidence.

It is held, therefore, that the Secretary had the power to hear and decide the issues raised by the adverse proceedings without waiting for a trial of them by the local land office or for the appeals contemplated by the rules.

We now come to the consideration of whether the Secretary of the Interior heard the adverse proceedings and whether at any hearing granted by him the parties in interest were represented and had the opportunity to present such evidence as they might desire to offer.

The court is of the opinion that the Secretary of the Interior granted a hearing and that at such hearing all of the parties
222 concerned in the result of it were not only present and properly represented but that they were there in pursuance of an express agreement to have speedily determined the mineral character of section 36 as known on January 26, 1903.

The Department of Justice, having been formally requested by the Department of the Interior and the Department of the Navy to intervene on behalf of the Government, found itself handicapped by the fact that the mineral character of the land involved had not been determined. After careful consideration of the matter the Department of Justice definitely concluded that unless that determination was promptly made an injunction and receivership was the only remedy open for the protection of the interests of the United States.

To apply for an injunction and a receivership meant costly proceedings in the courts and long delay. To prosecute the adverse proceedings in the Visalia land office and by appeal to the Commis-

sioner of the General Land Office and to the Secretary of the Interior meant a tardy determination of the question of title. Delay signified loss of oil by drainage into the adjoining lands, to the recognized disadvantage of all concerned. Sound sense and good judgment alike required an early determination of the nature of the land as known on January 26, 1903, and that end the Department of Justice and the transferees both sought to secure by mutual agreement. The Department of Justice, requested by the Department of the Interior and the Department of the Navy to protect the interests of the United States, agreed on its part that it would take no action for the appointment of a receiver or for an injunction if the transferees would
223 immediately endeavor to secure from the Department of the Interior an early hearing and determination of the known mineral character of section 36 and would refrain from the further development thereof. The claimants on their part promised not to further develop the section and to endeavor to secure from the Department of the Interior an early hearing of the issues involved in the adverse proceedings. In conformity with that agreement the transferees applied to the secretary for a hearing and determination of the matter, and that application was granted. The hearing was granted by the Secretary of the Interior on May 28th, and June 8, 1921, was set as the date on which the matter would be heard. All the parties interested were not only notified of the hearing, but at the date set therefor they were present by themselves or their representatives, in conformity with the notice ordered by the secretary.

The presence of all the parties before the Secretary of the Interior on June 8, 1921, was not an informal gathering to hear somebody talk, but to have the issues between the Government and the claimants speedily determined by the only official clothed with power to take immediate cognizance of the matter and to make such a determination. To hold otherwise would result in ignoring not only the agreement entered into by the authorized representatives of the Government and the transferees, but the considerations which induced the accord and the exigency which it was intended to meet. The time for mere talking ended with the conferences, and apparently prompt action, not talk, was the only available way of meeting the situation.

224 The determination by the Secretary of the Interior Department was a short cut, but it was a short cut which he had the right to take and which was clearly contemplated by the agreement between the Department of Justice and the transferees, to say nothing of the Navy, which by its representatives announced that an injunction and receivership was inadvisable and that an early hearing was the wise solution of the difficulty.

In the opinion of the court the agreement and the facts which induced its making establish to a certainty that the parties appeared before the Secretary of the Interior to secure from him a consideration of the law and the facts involved and a decision of the controversy. But did the Secretary have any facts or evidence before him upon which he could base a decision? The court thinks he did. The Secretary of the Interior was charged with knowledge of the records of the department and of all public documents pertinent to

the issues raised by the adverse proceedings. There was submitted for his consideration the statement of facts made by counsel for the plaintiff, which statement, in the presence of the representatives of all the interested parties, was, without objection, admitted to be substantially correct by the First Assistant Secretary of the Interior. From record and statement the Secretary knew that sections of township 30, not including section 36, were surveyed as early as 1856 and that the plat of the survey was in that year duly filed and approved by the Commissioner of the General Land Office. He also knew that section 36 and other portions of township 30 left unsurveyed in 1856 were surveyed in 1901, which survey was approved by the sur-
225 veyor general on August 1, 1902, and accepted by the Commissioner of the General Land Office on January 26, 1903. The plat and general description attached to the field notes of the survey of 1901 returned all of the land surveyed as mineral in character. The records disclosed that on February 28, 1900, the United States land office at Visalia was ordered to suspend from disposition, until further orders, lands of townships 13 to 30, inclusive. That suspension occurred 10 months prior to the completion of the 1901 survey, 2 years and 5 months before the approval thereof by the Surveyor General, and nearly 3 years preceding the acceptance of the survey by the commissioner. The suspension covered all of township 30, range 23, and therefore in terms embraced not only the portions of township 30 surveyed in 1901, but also those portions of the township which had been surveyed in 1856. The Secretary had before him the fact that on July 19, 1900, the suspension was continued as to all the lands involved pending inquiry as to their true character, which inquiry was then in progress, as shown by the letter of the Commissioner of the General Land Office addressed by him to the Visalia land office under date of July 19, 1900. The Secretary was informed that the special agent of the department authorized to make the inquiry made an examination of the lands on the basis of his knowledge and of his familiarity with the country generally. On the basis of his examination of the lands and his familiarity with them, the special agent made an official report to the department on March 2, 1904, as to the sections and townships suspended from disposition and recommended that suspension be continued as to some
226 of them and discontinued as to others. His report stated that no wells had been bored for oil in township 30, range 23 east, and that in his opinion all of the lands in the township should be relieved from further suspension.

The department records showed that on April 5, 1904, more than 4 years after the suspension was first ordered and more than a year after the survey was approved, the Commissioner of the General Land Office, on the basis of the special agent's report, relieved all of township 30 from suspension. The relief from suspension may not have been a determination and classification of the land as nonmineral, but the report and its approval by the official action taken upon it by the Comissioner of the General Land Office was some evidence that the suspended township was nonmineral. Presumptively the special agent appointed by the Interior Department did his duty, and as his report was not contradicted or impeached the Secretary of the Interior had a right to consider it as some evidence

of the facts therein stated and to give to it such weight in reaching a conclusion as in his opinion it was entitled to receive. To hold otherwise would simply mean that the report was an empty, valueless form and that it furnished no information and no evidence which waranted the department in relieving the lands of suspension.

The representatives of the Government and its interested departments present at the hearing knew all about the suspension of the lands from disposition and all about the report which resulted in the official order removing the suspension, and none of them questioned the good faith of the report or of the order as of the dates on
227 which they were made. Moreover, the report of the special agent and the action of the commissioner was supported as to section 36 by the important fact that, although oil lands were in demand at the time of the suspension, no one became interested in any way in that section until 1908, eight years after the suspension and 4 years after the special agents' report. The fact that no mineral was discovered in the section until 1918 and that no mineral was exposed in the township until 17 years after the suspension were circumstances tending to show that the value of the section as mineral was unknown in January, 1903.

Rule 2 of the Land Department barred the State from selecting lands in lieu of school sections, whether returned by the surveyor general as mineral or otherwise, unless it was shown and satisfactorily proven that the school section was chiefly valuable for mineral on the date when the survey was approved. Before the State would be permitted to select lieu lands the rule further required the State to establish the kind of mineral discovered, the extent thereof, and when and by whom the discoveries were made and that the land was chiefly valuable for its mineral deposits. In case the State failed to make that showing a lieu selection was not permitted. In the light of that rule, can it be said that the Secretary of the Interior was not warranted in considering the report of the special agent of the department, the exposure of the mineral in the township for the first time in 1911, and the discovery of oil in the section for the first time in 1918 as some evidence that section 36 was not known to be mineral in January, 1903?

228 The court is not called upon to pass upon the reasonableness of rule 2. Under that rule the Government can insist on the State keeping the 16 and 36 sections unless proven to be chiefly valuable for mineral deposits actually discovered, but can the Government at the same time insist that any one who purchases from the State does so at his peril if mineral be discovered subsequent to the purchase? Taking both positions, the Government would be considerably hampered in dealing with its public lands and the State would find it exceedingly difficult to convey a good title to school sections. If it be not known that a school section is valuable for its mineral deposits and that lack of information bars the State from selecting lieu lands, just how can the Government after the discovery of valuable mineral deposits consistently say that the State prior to the discovery had no right to sell the section to secure the school funds for which it was granted. Congress never contemplated any such situation as that, and if it did the purchasers of school sections surveyed in 1856 have been left with unsatisfactory

titles to the lands which they bought and upon which some of them and their successors have been paying taxes for about 60 years.

The fact that section 36 was sold for taxes in 1902 and not redeemed until 1908 is a circumstance tending to show that its value for minerals or for oil which could be profitably exploited was not known in January, 1903. If there had been any reason to believe in 1903 that section 36 was oil bearing, its sale for taxes would hardly have been permitted, and if sold for taxes redemption
229 would scarcely have been delayed for 5 years.

The court holds, 1st, that the Secretary of the Interior had jurisdiction to determine the character of section 36 as known on January 26, 1903, without waiting for a trial by the United States land office at Visalia and without waiting for appeals from the decisions reached by the local land office and the commissioner; 2nd, that he granted a hearing for the purpose of determining the issues raised by the adverse proceedings and gave notice to all the parties in interest of such hearing; 3rd, that he had before him evidence which he had a right to consider and which supported his dismissal of the proceedings; 4th, that he dismissed the adverse proceedings after a consideration of the law and facts and directed that the parties in interest be notified of the dismissal and that the case be closed on the records; 5th, that the order of dismissal was reduced to writing by his direction and was a judicial determination of the mineral character of the lands as known on January 26, 1903; 6th, that the Department of the Interior, the Department of Justice, the Department of the Navy, represented at the hearing, apparently accepted the dismissal of the matter as a final determination of the issues involved and took no steps indicating anything to the contrary until nearly five years later, when the defendant on May 8th, 1905, issued his order purporting to set aside and vacate the dismissal; 7th, the order of dismissal reduced to writing was a judgment on the merits, and its correctness can not be ques-
230 tioned in a collateral proceeding except for fraud Durant v. Essex Co., 7 Wall. 107, 109; Lyon I. Perin and Gaff Mrg. Co., 125 U. S. 698, 702.

The injunction prayed for should issue. Let a decree be prepared by counsel for the plaintiff enjoining the Secretary of the Interior from further prosecuting the adverse proceedings, said decree to be presented to the court after service thereof on counsel for the defendant.

JAMES F. SMITH,
Acting Associate Justice.

231 *Final decree*

Filed September 7, 1926

* * * * * *

The above-entitled cause coming on regularly to be heard before the above-entitled court on Wednesday, June 2, 1926, for trial and final hearing, plaintiff being represented by Oscar Sutro, Esq., F. D. McKenney, Esq., and Louis Titus, Esq., and the defendant being represented by Hon. W. C. Morrow, special counsel for the defend-

ant, and by Hon. B. M. Parmenter, Assistant Attorney General of the United States, the parties having theretofore duly filed in this court their stipulation and agreed statement of facts signed by the respective counsel of the parties to the above entitled cause, and the cause having thereupon been submitted on the pleadings and on said stipulation and agreed statement of facts and on the papers and records on file herein, and the cause having been argued by counsel for the respective parties, and having been thereupon submitted to the court for final decision, and the court having taken the same under advisement, and being fully advised in the premises, and having filed its opinion herein, concludes from the facts admitted by the pleadings and from the facts set forth in said agreed statement of facts:

232 I. The Secretary of the Interior had supervisory power to hold the hearing of June 8, 1921, and had jurisdiction to determine the character of section 36 as known on January 26, 1903, without a previous trial in the United States land office at Visalia, California, or appeals from decisions made by officers of the local land office at Visalia, California, and the Commissioner of the General Land Office.

II. That the Secretary of the Interior granted a hearing for the purpose of determining the issues raised by the adverse proceedings and gave notice to all the parties in interest of such hearing.

III. At the hearing on June 8, 1921, the Secretary of the Interior had before him evidence which he had a right to consider and which supported his dismissal of the adverse proceedings referred to.

IV. The order of dismissal which was reduced to writing at his direction was a judicial determination of the nonmineral character of the land as known on January 26, 1903.

V. The order of dismissal reduced to writing as aforesaid was a judgment on the merits and its correctness cannot be questioned in collateral proceedings except for fraud.

233 VI. The present Secretary of the Interior, the defendant herein, is without jurisdiction to proceed with adverse proceedings to determine the character of said land, and has no jurisdiction over said land.

VII. The order of the defendant dated May 8, 1925, purporting to reverse, vacate, and set aside the action of the former Secretary of the Interior in dismissing the adverse proceedings instituted against said land by letter dated January 14, 1914, as amended, and directing a hearing on the charges specified in said order, is without jurisdiction and said hearing would constitute a cloud upon plaintiff's title to the portions of said section 36 described in the complaint and will, unless restrained, cause plaintiff damage, for which plaintiff has no adequate remedy at law.

Wherefore it is now ordered, adjudged, and decreed that an injunction issue out of this court enjoining the defendant, Hubert Work, as Secretary of the Interior, from further prosecuting the adverse proceedings heretofore and on May 8, 1925, directed by him with regard to the title to the west half and the west half of the east half and lots five (5), six (6), seven (7), eight (8), eleven (11), and twelve (12) of section thirty-six (36), township thirty (30) south,

range twenty-three (23) east, Mount Diablo base and meridian, Kern County, California, and from ordering any hearing or directing any hearing to proceed in or before the United States land
234 office at Visalia, California, or in or before the General Land Office or before himself as Secretary of the Interior, regarding the issues raised in said adverse proceedings.

Done in open court this 7th day of September, 1926.

JAMES F. SMITH,
Acting Associate Justice.

From the foregoing decree the defendant notes an appeal in open court to the Court of Appeals of the District of Columbia, this 7th day of September, 1926, and the appeal is hereby allowed.

JAMES F. SMITH,
Acting Associate Justice.

No objection as to form.

W. C. MORROW,
Atty. for Defendant.

235 *Assignment of errors*

Filed November 5, 1926

* * * * * * *

Comes now the defendant, Hubert Work, as Secretary of the Interior, and assigns the following errors committed by the Supreme Court of the District of Columbia as the basis for defendant's appeal to the Court of Appeals of the District of Columbia.

I. That the supreme court erred in making the conclusion of fact set forth in Paragraph I of the final decree herein, reading as follows:

"The Secretary of the Interior had supervisory power to hold the hearing of June 8, 1921, and had jurisdiction to determine the character of section 36 as known on January 26, 1903, without a previous trial in the United States land office at Visalia, California, or appeals from decisions made by officers of the local land office at Visalia, California, and the Commissioner of the Land Office."

That said conclusion is contrary to the evidence in the case and the law applicable thereto.

II. That the supreme court erred in making the conclusion of fact set forth in Paragraph II of the final decree herein, reading as follows:

"That the Secretary of the Interior granted a hearing for
236 the purpose of determining the issues raised by the adverse proceedings and gave notice to all the parties in interest of such hearing."

That said conclusion is contrary to the evidence in the case and the law applicable thereto.

III. That the supreme court erred in making the conclusion of fact set forth in Paragraph III of the final decree herein, reading as follows:

"At the hearing on June 8, 1921, the Secretary of the Interior had before him evidence which he had a right to consider and which supported his dismissal of the adverse proceedings referred to."

That said conclusion is contrary to the evidence in the case and the law applicable thereto.

IV. That the supreme court erred in making the conclusion of fact set forth in Paragraph IV of the final decree herein, reading as follows:

"The order of dismissal which was reduced to writing at his direction was a judicial determination of the nonmineral character of the land as known on January 26, 1903."

That said conclusion is contrary to the evidence in the case and the law applicable thereto.

V. That the supreme court erred in making the conclusion of fact set forth in Paragraph V of the final decree herein, reading as follows:

"The order of dismissal reduced to writing as aforesaid was a judgment on the merits and its correctness can not be questioned in collateral proceedings except for fraud."

That said conclusion is contrary to the evidence in the case
237 and the law applicable thereto.

VI. That the supreme court erred in making the conclusion of fact set forth in Paragraph VI of the final decree herein, reading as follows:

"The present Secretary of the Interior, the defendant herein, is without jurisdiction to proceed with adverse proceedings to determine the character of said land, and has no jurisdiction over said land.

That said conclusion is contrary to the evidence in the case and the law applicable thereto.

VII. That the supreme court erred in making the conclusion of fact set forth in Paragraph VII of the final decree herein, reading as follows:

"The order of the defendant dated May 8, 1925, purporting to reverse, vacate, and set aside the action of the former Secretary of the Interior in dismissing the adverse proceedings instituted against said land by letter dated January 14, 1914, as amended, and directing a hearing on the charges specified in said order, is without jurisdiction and said hearing would constitute a cloud upon plaintiff's title to the portions of said section 36 described in the complaint and will, unless restrained, cause plaintiff damage, for which plaintiff has no adequate remedy at law."

That said conclusion is contrary to the evidence in the case and the law applicable thereto.

VIII. That the court was in error in enjoining this defendant, as Secretary of the Interior, from further prosecuting the adverse proceedings heretofore and on May 8th, 1925, directed by him
238 with regard to the title to the west half and the west half of the east half and lots five (5), six (6), seven (7), eight (8), eleven (11), and twelve (12) of section thirty-six (36), township thirty (30) south, range twenty-three east, Mount Diablo base and meridian, Kern County, California, and from ordering any hearing or directing any hearing to proceed in or before the United States land office at Visalia, California, or in or before the General Land Office or before himself as Secretary of the Interior, regarding

the issues raised in said adverse proceedings, for the reason that said injunction is contrary to the law applicable to this case and is an illegal interference with and a restraint upon the executive and legislative branches of the Government.

W. C. MORROW,
Special Counsel and Attorney for the Defendant.

Copy of the foregoing received this 9th day of October, 1926.

OSCAR SUTRO,
F. D. MCKENNEY,
LOUIS TITUS,
Attorneys for Plaintiff.

239 *Designation of record*

Filed November 5, 1926

* * * * * * *

It is hereby stipulated by the parties to the above-entitled action through their respective attorneys that the following parts of the original proceedings shall constitute the transcript on appeal of this cause to the Court of Appeals of the District of Columbia, to wit:

1. Bill of complaint with exhibits attached.
2. Motion for rule to show cause.
3. Rule to show cause with marshal's return thereon.
4. Answer of defendant with exhibits attached.
5. Opinion of Chief Justice McCoy.
6. Petition of plaintiff for reconsideration.
7. Memorandum opinion of Chief Justice McCoy on petition for reconsideration.
8. Order denying application for an injunction pendente lite.
9. Stipulation and agreed statement of facts.
10. Memorandum opinion of Mr. Justice Smith.
11. Final decree and notice of appeal.
12. Stipulation designating record on appeal.
13. Assignment of errors.

Dated this 21st day of September, 1926.

OSCAR SUTRO,
F. D. MCKENNEY,
LOUIS TITUS,
Attorneys for Plaintiff.
W. C. MORROW,
Special Counsel and Attorney for Defendant.

240 Supreme Court of the District of Columbia

UNITED STATES OF AMERICA,
DISTRICT OF COLUMBIA, *ss:*

I, Frank E. Cunningham, clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 239, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 44747 in equity,

wherein Standard Oil Company, a corporation, is plaintiff and Hubert Work, as Secretary of the Interior, is defendant, as the same remains upon the files and of record in said Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 7th day of December, 1926.

[SEAL.] FRANK E. CUNNINGHAM, *Clerk.*
By CHAS. B. COFLIN,
Assistant Clerk.

[Indorsement on cover:] District of Columbia Supreme Court. No. 4540. Hubert Work, Secretary of the Interior, appellant, vs. Standard Oil Company, a corporation. Court of Appeals, District of Columbia. Filed Dec. 8, 1926. Henry W. Hodges, clerk.

119 Tuesday, October 11th, A. D. 1927

HUBERT WORK, SECRETARY OF THE INTERIOR, APPELLANT
vs. No. 4540
STANDARD OIL COMPANY, A CORPORATION

On motion, the appellant is allowed to file a reply brief herein.

The argument in the above-entitled cause was commenced by Mr. W. C. Morrow, attorney for the appellant, and was continued by Mr. Louis Titus, attorney for the appellee, and was concluded by Mr. W. C. Morrow, attorney for the appellant.

120 In the Court of Appeals of the District of Columbia

HUBERT WORK, SECRETARY OF THE INTERIOR, APPELLANT
vs. No. 4540
STANDARD OIL COMPANY, A CORPORATION

Appeal from the Supreme Court of the District of Columbia

Before MARTIN, Chief Justice; ROBB and VAN ORSDEL, Associate Justices

Mr. Justice Van Orsdel delivered the opinion of the court.

VAN ORSDEL, Associate Justice. This is a proceeding in equity submitted to the court below on bill, answer, and an agreed statement of facts to determine whether the title to certain lands therein described passed to the State of California under the provisions of the act of Congress of March 3, 1853, 10 Stats. 244. The act, among other things, provided for the grant to the State of section 16 and section 36, in each township, for public school purposes.

It appears that the survey of the lands in question, section 36, township 30 south, range 23 east, Mount Diablo base and meridian, was completed on December 20, 1901; approved by the surveyor general August 1, 1902; accepted by the Commissioner of the General Land Office January 26, 1903; and filed in the United States local land office at Visalia, California, May 16, 1903.

From the agreed statement of facts it appears that the lands were returned on the official survey as mineral in character, but that oil was not discovered in township 30 until 1911, and the first discovery of oil in the section in question occurred in 1918. The nearest discovery was in township 30, range 22 east, where oil had been produced for some years prior to 1903.

It also appears that on the 28th of February, 1900, the Commissioner of the General Land Office directed the local land office at Visalia to suspend from disposition, until further ordered, a
121 large tract of land, including township 30, in which the land in controversy is situated, pending inquiry as to the character of the land. An agent was accordingly directed to examine and report upon the mineral or nonmineral character of the land included

in the order of suspension. The agent made a report to the Commissioner of the General Land Office March 22, 1904, to the effect that no oil wells had been bored in township 30, and that in his opinion the lands in that township should be relieved from further suspension. The commissioner, on the strength of this report, on April 5, 1904, vacated the order of suspension as to township 30.

Plaintiff, the Standard Oil Company, acquired title to a portion of section 36 through mesne conveyances from the State of California, and is in possession of the balance under a contract for development with persons holding title from a grantee of the State. The title of the State and its successors in interest was not challenged until 1914, when adverse proceedings were ordered on a report of the field division at San Francisco, entered April 5, 1913. In these proceedings it was charged that section 36 contained valuable products of petroleum and had been known to be mineral in character prior to January 26, 1903. No action, however, was taken on the pending contest until February 19, 1921, when it was called to the attention of the Attorney General and the Secretary of the Navy. The question of the sort of proceeding that should be brought to test the title was submitted to the Department of Justice, where it was decided that the determination of title was a matter within the jurisdiction of the Department of the Interior, since the vesting of title depended upon the mineral or nonmineral character of the land at the date of the approval of the survey. Accordingly, the Department of Justice, after considering the advisability of applying to the court for injunction and receivership to prevent the further operation and development of the lands in question, decided that such delay would result in large quantities of oil being drained from the land into the property of contiguous operators. It was agreed, therefore, that such a proceeding was inadvisable if an early hearing in the Interior
122 Department could be had to determine the character of the land at the time of the approval of the original survey. A conference was held between representatives of the Department of Justice, the Department of the Interior, the Department of the Navy, and the plaintiff oil company, and the company agreed that it would refrain from further drilling and development of the land, awaiting a speedy determination in the Department of the Interior with respect to the matter of title.

Pursuant to this agreement, plaintiff company, by their representatives, requested the Secretary to decide the title to section 36, and, by permission of the Secretary, a brief was filed in support of the application. The brief, among other things, called attention to the survey of the lands and the approval thereof; the suspension from disposition of township 30, pending the report of the special agent of the department as to the character of the land, and the relieving of the lands from suspension on the ground that no mineral had been discovered thereon; to the certificate of the State from the local land office at Visalia, certifying there was no valid claim against the

State's title; to the fact that the land was sold for a small tax in 1902 and not redeemed until 1908 as evidence of the opinion held as to its mineral character and value when the survey was approved in 1903; to a hearing before the Committee on Public Lands of the House of Representatives December 18, 1916, at which a tender to the Navy of naval reserve No. 1, in which the land in controversy is located, was discussed, and the tender refused on the ground that the Navy Department did not believe the land to contain oil; and to a hearing before the Senate Committee on Public Lands February 9, 1916, at which Commanders Wright, Richardson, and Landis, of the Navy, testified to the nonmineral character of the land.

Accordingly, a written notice was given by the Secretary of the Interior to the oil company, the Attorney General, and the Secretary of the Navy that hearing had been asked "as to whether the title to section 36 passed to the State of California under its grant." A hearing was set for June 8, 1921. The parties notified were requested by the Secretary to be present. A hearing was had, all parties being fully and ably represented. It was agreed by all the
123 parties, except Mr. Finney, First Assistant Secretary of the Interior, who had been called in to sit with the Secretary, that the taking of evidence in the local land office was not necessary for the purpose of determining whether or not the land in question and land adjacent thereto showed structural and geological conditions indicating that it was oil land at the time of the approval of the survey. The case was accordingly heard by the Secretary, and "at the conclusion of the hearing the Secretary of the Interior asked Mr. Finney and other representatives of the Government whether the facts stated by the representatives of the transferees were admitted, and Mr. Finney replied that the statement was substantially correct." The Secretary thereupon ordered the adverse proceedings dismissed, and his decision was, by his direction, written by Mr. Finney and addressed to the Commissioner of the General Land Office. The commissioner was directed to dismiss the proceedings against the State of California, "to notify all parties in interest of the dismissal, and to close the case upon the records of the General Land Office."

No application for rehearing was made, and the case was considered closed until May 8, 1925, when the defendant Secretary, of his own motion, reversed and vacated the decision of his predecessor in office and ordered a hearing of the charges made in the adverse proceedings, which had been dismissed.

The present action was brought for an injunction pendenti lite, enjoining the defendant Secretary from continuing the proceedings directed by him, and upon final hearing for a permanent injunction. On hearing, the injunction as prayed for was granted, and from the decree this appeal was taken.

By the act of 1853 the grant of school lands to the State of California was made under substantially the same terms as similar grants were made from time to time to the other States of the

Union, with the usual reservation that the lands so granted were not known to be chiefly valuable for mineral at the date of the approval of the survey thereof by the Land Department. The question here presented, involving the title of the State to
124 these lands, narrows itself to one of procedure. It is urged by counsel for the Government that the rules, regulations, and procedure of the Interior Department require that where dispute arises as to the mineral character of public lands the issue must first be tried out in the local land office, where testimony can be taken, and that the decision of the local land office can be carried to the Commissioner of the General Land Office for review only by appeal and from the decision of the commissioner by appeal to the Secretary, who is required to determine the case upon the record made in the local land office. This course of procedure may well be necessary to insure orderly procedure where testimony is to be taken. In the present case, however, it was expressly stipulated by the parties in interest that the taking of testimony in the local land office was unnecessary, since the office records, documents, and agreed statement furnished a complete case on which to base a decision of the question presented to the Secretary.

Wide jurisdiction is conferred upon the Secretary in the matter of the supervision of all public business relating to public lands. His duties are not specifically defined by statute, but are regulated by rules and regulations adopted by the department for the ordinary procedure and disposition of the public business. His jurisdiction is broadly supervisory, and it may be exercised either directly or by review on appeal, and, as said by the court below, "That supervisory authority he may exercise either by direct orders or by review on appeal. True enough, he may by rules, orders, and regulations prescribe the means, manner, and method of exercising his supervisory powers, and may delegate to subordinates that which he might do himself. Such rules, orders, and regulations, however, were designed to facilitate, not to hamper, the department in the dispatch of its business, and from that it follows that any delegation of his supervisory powers does not exclude him from their exercise should he so elect."

The interpretation by the department itself of the summary and discretionary jurisdiction of the Secretary to dispose of matters
125 of public importance upon due notice and hearing is quoted with approval from 5 L. D. 495, in Knight vs. United States Land Association, 142 U. S. 178, as follows: "The statutes in placing the whole business of the department under the supervision of the Secretary invest him with authority to review, reverse, amend, annul, or affirm all proceedings in the department having for their ultimate object to secure the alienation of any portion of the public lands, or the adjustment of private claims to lands, with a just regard to the rights of the public and of private parties. Such supervision may be exercised by direct orders or by review on appeals. The mode in which the supervision shall be exercised in the

absence of statutory direction may be prescribed by such rules and regulations as the Secretary may adopt. When proceedings affecting titles to lands are before the department, the power of supervision may be exercised by the Secretary, whether these proceedings are called to his attention by formal notice or by appeal. It is sufficient that they are brought to his notice. The rules prescribed are designed to facilitate the department in the dispatch of business, not to defeat the supervision of the Secretary. For example, if, when a patent is about to issue, the Secretary should discover a fatal defect in the proceedings, or that by reason of some newly ascertained fact the patent, if issued, would have to be annulled, and that it would be his duty to ask the Attorney General to institute proceedings for its annulment, it would hardly be seriously contended that the Secretary might not interfere and prevent the execution of the patent. He could not be obliged to sit quietly and allow a proceeding to be consummated which it would be immediately his duty to ask the Attorney General to take measures to annul. It would not be a sufficient answer against the exercise of his power that no appeal had been taken to him, and therefore he was without authority in the matter."

The court in the same case (p. 181) expressed its view on the same subject as follows: "It makes no difference whether the appeal is in regular form according to the established rules of the department or whether the Secretary on his own motion, knowing that
126 injustice is about to be done by some action of the commissioner, takes up the case and disposes of it in accordance with law and justice. The Secretary is the guardian of the people of the United States over the public lands. The obligations of his oath of office oblige him to see that the law is carried out and that none of the public domain is wasted or is disposed of to a party not intitled to it. He represents the Government, which is a party in interest in every case involving the surveying and disposal of the public lands."

While the matter of procedure in contested cases from the local land office to the Secretary by appeal is regulated by rules and regulations, the rules thus adopted by no means deprive the Secretary of his general supervisory authority as conferred by statute. In the case of extraordinary emergency or exigency, the Secretary may exercise his supervisory power under rules of the department, which provide in effect that none of the rules in the department shall be so construed as to deprive the Secretary of any direct or supervisory power conferred upon him by law. Indeed, it was agreed by all the parties in this case that, inasmuch as no testimony was required on disputed issues of fact, it was proper and in accordance with the practice in the department for the Secretary to hear pending cases and to decide them on agreed statement of facts, the records in his office, and documentary evidence. We are of opinion, therefore, that the Secretary had jurisdiction to hear and determine the case presented to him and to render a final decision therein.

It is contended, however, by counsel for defendant that the various officials of the Government had no notice that the Secretary intended,

without the taking of additional testimony, to consider the mineral character of the land as known to exist in 1903. It is too late to question the sufficiency of the notice, since all parties interested were present in response thereto and agreed that the hearing might proceed upon the record before the Secretary. The notice recited in terms that the hearing was to determine "as to whether the title to section 36 passed to the State of California under its grant." It was well known by all parties that the only question in issue was the determination of the mineral character of the land at the time
127 of the approval of the survey in 1903. Indeed, the hearing resulted from a report of the Department of Justice to the Navy and Interior Departments that the mineral character of the lands had not been determined, that it could only be decided by the Secretary of the Interior, and that an emergency existed which would not justify the delay which would follow if proceedings were instituted in the courts, much less the tedious procedure by appeal through the various tribunals of the Land Department.

It may be well to inquire, if the hearing was not to determine this issue, what was its purpose? Why this distinguished array of representatives of the different departments of the Government if they were not interested in the result of the hearing? As the learned justice below pertinently observed in his opinion, "The presence of all the parties before the Secretary of the Interior on June 8, 1921, was not an informal gathering to hear somebody talk, but to have the issues between the Government and the claimants speedily determined by the only official clothed with power to take immediate cognizance of the matter and to make such a determination. To hold otherwise would result in ignoring not only the agreement entered into by the authorized representatives of the Government and the transferees but the considerations which induced the accord and the exigency which it was intended to meet. The time for mere talking ended with the conferences, and apparently prompt action, not talk, was the only available way of meeting the situation."

With the decision of the Secretary that the land was nonmineral in character at the time of the approval of the survey, nothing further remained for the Interior Department to do. The grant was a grant in praesenti, and title passed to the State with the approval of the survey. There was no patent to be issued. The passing of the legal title was complete. It was the last act in the series essential to transfer the title of the Government to the State. Title having passed, the present Secretary has no longer jurisdiction over the land. "With the title passes away all authority or control of the executive department over the land and over the title which it has conveyed. It would be as reasonable to hold that any private owner of land who has conveyed it to another can, of his own voli-
tion, recall, cancel, or annul the instrument which he has
128 made and delivered. If fraud, mistake, error, or wrong has been done, the courts of justice present the only remedy. These courts are open to the United States to sue for the cancellation of the deed or reconveyance of the land as to individuals, and if

the Government is the party injured, this is the proper course." Moore vs. Robbins, 96 U. S. 530, 533.

It is therefore futile to contend that the United States is a requisite party to this proceeding. If the legal title were still in the United States, this would be so; but title having passed, the action here is one solely to prevent the Secretary from exercising a jurisdiction which he does not possess.

Equally untenable is the contention of counsel for the Government that the decision of the former Secretary should be vacated because it is alleged that he refused to consider evidence of geological conditions as bearing upon the question of the known mineral character of the land. Counsel in their brief have repeatedly admitted the jurisdiction of the Secretary over the adverse proceedings. Having jurisdiction of the case, if he refused to admit evidence that should have been admitted it merely amounts to error, which can not be considered in this collateral proceeding.

We do not agree that the case was determined by the Secretary without sufficient evidence. He had before him the records of the department and of all public documents bearing upon the issues involved in the adverse proceedings. He had the statement of facts made by counsel for plaintiff, made in the presence of the representatives of the Government, and without objection admitted and conceded by the First Assistant Secretary to be substantially correct. Without stopping to review the evidence before the Secretary and its pertinency as bearing upon the case here disclosed by the record, it is sufficient that all parties were represented. No objection was presented to the submission of the case, and the Secretary, acting within his jurisdiction, decided the case. It would now be in conflict with all lawful and just rules of procedure to hold that the decision, in the absence of any averment of fraud, does not possess such finality as to forbid its future reversal in the manner here attempted.

129 The decree is affirmed with costs.

130 Monday, December 5th, A. D. 1927

* * * * * * *

HUBERT WORK, SECRETARY OF THE INTERIOR, appellant vs. STANDARD OIL COMPANY, A CORPORATION	No. 4540, October term, 1927

Appeal from the Supreme Court of the District of Columbia

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said Supreme Court in this cause be, and the same is hereby, affirmed with costs.

Per Mr. JUSTICE VAN ORSDEL.

DECEMBER 5, 1927.

131 In the Court of Appeals of the District of Columbia

HUBERT WORK, SECRETARY OF THE INTERIOR, APPELLANT
v.
STANDARD OIL COMPANY, A CORPORATION
No. 4540

The clerk in the preparation of the record on petition for certiorari to the Supreme Court of the United States will include the following, viz:

1. The transcript of record.
2. Argument of case.
3. Decree.
4. Opinion.
5. This designation.

W. C. MORROW,
Attorney for Appellant.

(Indorsed:) No. 4540. Hubert Work, Secretary of the Interior, vs. Standard Oil Company, a Corporation. Designation for preparation of record on petition for certiorari to the Supreme Court of the United States. Court of Appeals. District of Columbia. Filed January 25, 1928. Henry W. Hodges, clerk.

132 Court of Appeals of the District of Columbia

I, Henry W. Hodges, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 131, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals, per designation of counsel, in the case of Hubert Work, Secretary of the Interior, appellant, vs. Standard Oil Company, a Corporation, No. 4540, January term, 1928, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 25th day of January, A. D. 1928.

[SEAL.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Supreme Court of the United States

Order allowing certiorari

Filed March 12, 1928

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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In the Supreme Court of the United States

OCTOBER TERM, 1927

No. ——

HUBERT WORK, SECRETARY OF THE INTERIOR,
Petitioner

v.

STANDARD OIL COMPANY

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

Hubert Work, as Secretary of the Interior, prays that a writ of certiorari issue to review the judgment of the Court of Appeals of the District of Columbia (R. 125) affirming with costs the judgment of the Supreme Court of the District of Columbia (R. 113) in the above case.

OPINIONS OF THE COURTS BELOW

The opinion of the Supreme Court of the District of Columbia is set forth in the record filed herewith on page 95 and that of the Court of Appeals of the District of Columbia, on page 119.

JURISDICTION

The judgment of the Court of Appeals of the District of Columbia was entered on December 5, 1927. (R. 125.) The jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

This case involves the question whether the Department of the Interior has ever determined the known mineral or nonmineral character of Section 36, T. 30 South, R. 23 East, M. D. B. & M., State of California, as of January 26, 1903, the date when the survey was accepted by the General Land Office.

STATEMENT OF THE FACTS

By the Act of March 3, 1853, c. cxlv, 10 Stat. 244, Congress granted to the State of California sections 16 and 36 for public-school purposes. This Act has been consistently construed to mean that if the lands in question were known mineral in character at the date of the approval of the survey, title thereto did not pass to the State. The determination of this question rests solely in the Department of the Interior.

The official survey returned this section as mineral in character. The State of California on March 7, 1903, offered this section as a base for indemnity school land selection on the ground of its

mineral character and this offer remained on file in the General Land Office until November 20, 1905.

Long prior to the date of survey, to wit, in July, 1900, the General Land Office had suspended from agricultural entry some forty-six townships in this part of California, including the township in which this section was located. The order recited that this suspension did not include mineral lands. (R. 11). In April, 1904, this township, together with about fourteen others, was relieved from this suspension. This order recited that only lands where active mineral development was in progress were continued suspended. (R. 16.)

On September 8, 1908, this section, together with other lands, was temporarily withdrawn from agricultural entry, pending examination and classification by the Geological Survey. (R. 91.) On June 4, 1909, it was classified as oil lands (R. 92) which classification was approved by the Secretary of the Interior, and the section was included in Temporary Withdrawal No. 5 on September 27, 1909 (R. 93).

On July 1, 1910, the Secretary of the Interior approved the recommendation of the Geological Survey that these lands be withdrawn from settlement or entry and reserved for legislation affecting petroleum lands of the United States. This was approved by President Taft the next day. (R. 94.)

On September 2, 1912, this section, by executive order, was permanently withdrawn and included in Naval Reserve No. 1. (R. 95.)

On August 25, 1908, George Hay and M. W. Buffington applied to the State of California to purchase this land, but their applications by the terms thereof could not be approved before November 23, 1908. (R. 18.) About one year later Oscar Sutro, as agent for Standard Oil Company, purchased from Hay his interest in his portion of said section and on January 31, 1910, received from California purported patent therefor. On January 20, 1910, the State issued patent to Buffington purporting to cover the balance of the section. (R. 6.)

Nothing was done toward developing said lands until August, 1918, when Standard Oil Company began drilling a well which discovered oil in January, 1919. A few months later they acquired under contract the right to develop the balance of the section claimed by Buffington.

On January 14, 1914, the General Land Office directed that charges be filed and proceedings begun in the local land office against this section on the ground that it contained valuable petroleum deposits and was known to be mineral in character at and prior to the date of survey, December 20, 1901. (R. 35.) No further action was taken thereon until March 2, 1921, when the General Land Office ordered a renewal of the proceedings and amended the charges of known mineral character as of the date of acceptance of survey, January 26, 1903. (R. 75-6.)

Notice was served upon claimant and proceedings started under the regulations prescribed by

the Interior Department for the orderly determination of the charges by means of a hearing at which both the government and claimant could present testimony under oath and cross-examine witnesses. These regulations required claimants contesting charges to file within thirty days a written denial under oath or a statement of facts rendering the charges immaterial. (44 L. D. 572.)

No such answer or statement was filed by claimant in the local land office, where the proceedings were pending, or elsewhere, except a certain brief by Mr. Sutro, attorney for claimant, with Secretary Fall on May 26, 1921, the opening paragraph of which recited:

> This is the argument in support of the request that the Secretary of the Interior decide that in view of the previous action of the Department and of its regulations in force in January, 1903, the title to said Section [36] is vested in the State of California or its grantees. (R. 79.)

Mr. Sutro was in Washington in May, 1921, and conferred with various officials of the Departments of Justice and of the Interior. It was agreed that the Department of Justice would not seek the appointment of a receiver nor an injunction against the operation of the lands provided there should be no further development of the lands by claimant. This agreement was based on the understanding that claimant would endeavor to secure an early

determination by the Interior Department of the known mineral character of the land. (R. 69.)

Mr. Sutro believed that the question of title to this land could be settled without taking testimony as to the geological or structural conditions on adjacent lands. First Assistant Secretary Finney of the Interior Department disagreed with him. (R. 72.) Nevertheless, Mr. Sutro asked for an oral hearing before the Secretary, a proceeding where it was impossible to take testimony on disputed questions of fact. (R. 73.)

Secretary Fall granted such oral hearing on June 8, 1921, at which claimant was represented as well as various officials from the Departments of the Interior, Justice, and Navy. The proceedings consisted of oral argument by Mr. Sutro, following the points in his brief previously filed, wherein he urged that it was not necessary to proceed with taking testimony before the local land office on the charges pending, because the previous action of the Department and its regulations had already determined the character of the land. He relied on three grounds for relief, viz:

1. The nonmineral character had been determined in 1904 when this land was included with other large tracts in the Order restoring the same to agricultural entry.

2. It had been determined to be nonmineral because of the existence of certain rules of the Department in 1903 providing that states could not

exchange school lands for other lands on the ground of their mineral character, unless there was mineral actually exposed or discovered on the section in question, and since there was no mineral actually exposed on this Section 36 in 1903, if this rule had been applied, this section would have been held nonmineral.

3. There were many and compelling equities in favor of the claimant's title. (R. 37 et seq.)

At the end of Mr. Sutro's argument, Secretary Fall, after asking various questions of Assistant Secretary Finney and others, announced "The contest will be dismissed." (R. 49.) No findings or conclusions were made, no opinion filed, and no opportunity offered for presentation of testimony, or argument on behalf of the government.

In February, 1924, the Congress of the United States, by joint resolution, directed petitioner, as Secretary of the Interior, to institute proceedings to assert and establish title of the government to this section. Accordingly petitioner issued an order reversing and vacating the order of Secretary Fall aforesaid and directed the Register and Receiver at Visalia, California, to hold a hearing on the charge that the land was mineral in character and so known on January 26, 1903. (R. 21.) Notice of said charges was served upon claimant and preparations made by petitioner for further proceedings, when in October, 1925, Standard Oil Company filed its bill in the Supreme Court of the

District of Columbia against this petitioner for a permanent injunction restraining petitioner from proceeding further with the charges against said land.

An answer was filed denying that the Interior Department had ever adjudicated the known mineral character of the section. (R. 27.) Chief Justice McCoy, of the Supreme Court of the District, after a hearing, denied complainant's motion for a preliminary injunction. (R. 50.) Acting Associate Justice Smith, of the Supreme Court of the District of Columbia, after a hearing on the merits, found for the plaintiff, and enjoined petitioner from proceeding with the charges. (R. 113.) On appeal, the action of the trial court was affirmed by the Court of Appeals of the District of Columbia. (R. 125.)

SPECIFICATION OF ERROR

The Court of Appeals erred in affirming the judgment of the trial court and in holding that the dismissal by Secretary Fall of the contest then pending was an adjudication of the nonmineral character of the land in 1903.

REASONS FOR GRANTING THE WRIT

The case involves considerations of great importance to the government and the people of the country. The judgment of the Court of Appeals, due probably to a misreading of the record before it, has enjoined the head of one of the administra-

tive branches of the Federal Government from proceeding with the discharge of duties assigned to him by the Congress. This judgment does violence to principles long established in the administration of the public lands and repeatedly recognized by the decisions of this court. Secretary Fall could alienate the title of the United States to this land only by an adjudication on the merits. This he did not do. The most that can be said of his dismissal of the charges is that he considered the government estopped to continue the proceedings, because of the existence of the school-land regulations of 1903 or the relief from suspension in 1904 or the equities urged by claimant.

ARGUMENT IN SUPPORT OF PETITION

Secretary Fall neither made nor attempted to make any decision on the merits, nor was he asked to do so. The case of *United States* v. *Southern Pac. Co.*, 251 U. S. 1, 13, decided in 1919, laid down the rule that the test of known mineral character was not the actual production of mineral from the land, but rather "geological conditions, adjacent discoveries and other external conditions" upon which experienced men rely. This case likewise definitely determined that lands immediately adjacent to Section 36 were known mineral in 1904.

It was evident to all parties concerned that no adjudication of the known mineral character of this land could be made without taking evidence, which has never been done in this case. Mr.

Sutro's efforts were directed towards persuading Secretary Fall that it was not necessary to go into the merits because, as he said, "the time has passed when the United States can assert its title thereto, and that the United States is estopped by the judgment of this department that this was nonmineral land in 1904, and by its own regulations, which defined it as nonmineral land in 1903." (R. 46.)

The opinion of the Court of Appeals is based upon an absolutely erroneous construction of the record in that it states repeatedly (R. 121, 122, 123) that it was agreed by the parties at the oral hearing that it was not necessary to go into the question of geological evidence. This is a gross error. The record recites that this contention was made by Mr. Sutro, claimant's attorney, but was disputed by Assistant Secretary Finney, and because Mr. Sutro considered this question of fact immaterial it was not discussed at the hearing on June 8, 1921, nor at any prior conferences between Mr. Sutro and Secretary Fall or Assistant Secretary Finney. (R. 72.)

Chief Justice McCoy of the Supreme Court of the District, in denying the motion for an injunction *pendente lite*, correctly appraised the effect of Secretary Fall's dismissal of the charges, when he said (R. 58):

> The Secretary did not determine that the lands were not known in 1903 to be mineral. He said in substance that it was not worth while to waste time to inquire as to that, for

> even though the evidence taken on the contest might show that the lands were known to be mineral still he could not find so, as the inquiry as to that had been precluded by the department. If the action of Secretary Fall was final, then there never has been and never will be a determination of the contest directed by the department in 1914, notwithstanding that since 1900 the department has from time to time shown that it considered the question to be an open one.

The Court of Appeals, as a result of its failure to read correctly the plain record before it, has erroneously created an adjudication on the merits out of an informal argument before Secretary Fall, which was directed solely to persuading the Secretary that a determination on the merits, which was then pending in the local land office, was an unnecessary waste of time and money, because the government was estopped to claim this land.

Wherefore it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the Court of Appeals of the District of Columbia should be granted.

W. C. Morrow,
Attorney and Special Counsel.

February, 1928.

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No. 71

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928

ROY O. WEST, Secretary of the Interior,
Petitioner,

—VS.—

STANDARD OIL COMPANY, a corporation,
Respondent.

CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR PETITIONER

W. CARR MORROW,
Attorney and Special Counsel for Petitioner.
Address: Republic Building, Seattle, Washington

THE ARGUS PRESS—SEATTLE

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No. 71

CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR PETITIONER

This case arises on a writ of certiorari to review the judgment of the Court of Appeals of the District of Columbia affirming with costs the judgment of the Supreme Court of the District of Columbia.

The opinion of the Supreme Court of the District of Columbia is set forth in the record, page 95, and that of the Court of Appeals of the District of Columbia on page 119. (23 Fed. (2d) 750)

The decree of the Supreme Court of the District of Columbia was entered September 7, 1926 (R. 113), and the decree of the Court of Appeals for the District of Columbia was entered on December 5, 1927 (R. 125).

JURISDICTION

Respondent sought and has been granted by the Supreme Court of the District of Columbia, affirmed by the Court of Appeals of the District of Columbia, an injunction against the petitioner restraining him from proceeding, in the discharge of his official duties as Secretary of the Interior, to determine the mineral or non-mineral character of Section 36, Township 30 South, Range 23 East, Mount Diablo B. & M., located in the so-called Elk Hills, Kern County, State of California. The jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

The case involves considerations of great importance to the government and people of the United States. The Court of Appeals of the District of Columbia, due probably to a misreading of the record before it, has enjoined the head of one of the administrative branches of the federal government from proceeding with the performance of duties assigned to him by the laws of the land and the joint resolution of the Congress. This judgment does violence to long established principles in the administration of the public lands and repeatedly recognized by the decisions of this court.

STATEMENT OF THE CASE

This case involves the question of whether the Secretary of the Interior shall be permitted, in the discharge of his official duties, to determine whether this so-called school section in the State of California was or was not known mineral in character as of January 26, 1903, the date when the survey of said section was accepted by the General Land Office.

The original petitioner herein was Hubert Work, Secretary of the Interior, who has been succeeded by Roy O. West, substituted as petitioner herein. It will be understood that in the use of the term "petitioner" we are referring to Hubert Work as Secretary of the Interior up to the date of his resignation, at the close of business, July 24, 1928, and since said date to Roy O. West in similar official capacity.

Petitioner had been directed by joint resolution of the Congress of the United States in February, 1924, to institute proceedings to assert and establish title of the Government to the Section in question. Petitioner accordingly had directed the Register and Receiver at Visalia, California, to hold a hearing on the charge that the land was mineral in character and so known on January 26, 1903 (R. 21). Notice of said charges was served upon the respondent as required by law and hearings were about to be instituted when in October, 1925, respondent filed its complaint in the Supreme Court of the District of Columbia,

asking for a permanent injunction restraining petitioner from proceeding further with the charges against said land.

After reciting certain facts with regard to the history of this section, which will be referred to later, the bill set up three different grounds for relief charging that the non-mineral character of this land had been determined on three different occasions. Paragraph IV alleges that the non-mineral character of the land was determined by an order relieving the same from suspension in 1904 (R. 3). Paragraph V charges that the regulations of the Department of the Interior in force in 1903 fixed the non-mineral character of the land as a rule of property and vested title in the State of California (R. 4). Paragraph X alleges that Secretary Fall adjudicated this question in June, 1921 (R. 7).

An answer was filed in behalf of petitioner denying that the Department of the Interior had ever adjudicated the known mineral character of this section (R. 27). It alleged that the lands involved were public lands of the United States; that they had been returned by the surveyors as mineral in character; that these lands had always been treated as public lands of the United States; that the exclusive jurisdiction to determine the mineral character or non-mineral character of public lands reposed in the Department of the Interior and no such adjudication as to Section 36 had ever been made by the Department; and that petitioner as Secretary of the Interior Department was proceeding in the exercise of that jurisdiction and pursuant to direction of Congress by its joint

resolution above mentioned to make such determination. The answer denied that the court had any jurisdiction over the case because the petitioner had no personal or individual interest in the matters or issues involved, and charged that the suit was in effect one against the United States; that the complaint sought to adjudicate the plaintiff's title to the lands, and since the United States had not consented to be sued, and was not a party, the relief prayed for would be an illegal interference with the executive and legislative branches of the Government (R. 27-35).

Chief Justice McCoy of the Supreme Court of the District of Columbia, after hearing, denied on December 18, 1925, complainant's motion for a preliminary injunction (R. 65). The hearing on the merits came before Acting Associate Justice Smith of the Supreme Court of the District, who found for the respondent and enjoined the petitioner from proceeding with the hearing upon the charges filed against said section (R. 113). On appeal, the action of the trial court was affirmed by the Court of Appeals of the District of Columbia (R. 125). (23 Fed. (2d) 750)

The following facts with respect to the history of this Section 36 are established by the record in the case and are pertinent to the issues.

This suit involves the title to Section 36, Township 30 South, Range 23 East, Mount Diablo B. & M., located in the so-called Elk Hills in Kern County, State of California.

By the Act of March 3rd, 1853, Congress granted to the State of California Sections 16 and 36 for public school purposes and provided that none other than

township lines should be surveyed when the lands are mineral or are deemed unfit for cultivation (10 Stat. L. 244, Chap. CXLV). About half of the said township was surveyed in 1856, but the balance of the township including the section in question, Section 36, was not surveyed until 1901. This survey was accepted by the Commissioner of the General Land Office on January 26, 1903. This date is of prime importance in determining the issues of this case. If the section in question was on this date known mineral lands, the title did not pass to the state under the school land grant. The Department of the Interior has the exclusive jurisdiction to determine whether the lands at this date were or were not known mineral in character. It is the contention of the government that the mineral character of this section has never been adjudicated by the department.

The plat and general description attached to the field notes of this official survey returned this section 36 as mineral in character. This mineral return was at all times thereafter on file in the office of the United States Surveyor General in California and in the Office of the Secretary of the Interior at Washington, D. C., and was part of the official public records (R. 66).

Prior to the survey in question, to-wit, on July 19, 1900, the Commissioner of the General Land Office, having previously telegraphed the Register and Receiver at Visalia, California, to suspend from disposition until further orders some forty-six townships, including the township wherein Sec. 36 here involved

was located, issued his official order to the Register and Receiver as follows:

"Sirs:

Suspensions from disposition of certain townships by telegrams of February twenty-sixth and twenty-eighth, last, will be continued for a reasonable time pending inquiry as to the true character of the lands which is now in progress.

These suspensions do not include mineral lands.

Very respectfully,

Binger Hermann, Commissioner."

(R. 11).

On March 7, 1903, the State of California offered Sec. 36 as a base for indemnity school-land selection on the ground of its mineral character. This application remained on file in the General Land Office until November 20th, 1905, when the State of California filed application to amend the same by the substitution of other lands as base (R. 50).

On April 5th, 1904, the Acting Commissioner of the General Land Office by letter addressed to the Register and Receiver at Visalia relieved from the suspension from disposition about fourteen of the forty-six townships above referred to, including the entire township in which this section 36 was located. This action was based upon the report of a special agent covering the lands suspended by the order of July 19, 1900. The order recites:

"I am now in receipt of the agent's report to the effect that certain of the lands so suspended are being developed for their deposits of mineral and that numerous oil wells have been sunk

which have proved to be good producers of mineral. Other townships and portions of townships have not been developed at all, for wells that have been sunk have proved to be barren. The lands upon which he states active mineral development is in progress will be allowed to continue suspended, but as to the following tracts where no mineral has been discovered it is believed that no good reason exists for further suspension.

"Accordingly the lands hereinafter described are hereby relieved from suspension." (R. 16, Ex. F)

On September 8th, 1908, this section in question, together with other lands in the McKittrick-Sunset Oil District, were temporarily withdrawn from agricultural entry pending their examination and classification by the United States Geological Survey (R. 91, Ex. 12). On June 4th, 1909, the Director of the United States Geological Survey classified this section, together with other lands, as oil lands (R. 92, Ex. 13), and on June 7th, 1909, the classification was approved by the Secretary of the Interior and the temporary withdrawal continued pending consideration of legislation on the question. On September 27th, 1909, this section, with other land, was included in Temporary Withdrawal No. 5 in the following language:

"In aid of proposed legislation affecting the use and disposition of the petroleum deposits on the public domain, all public lands in the accompanying lists are hereby temporarily withdrawn

from all forms of location, settlement, selection, filing, entry, or disposal under the mineral or non-mineral public-land laws. All locations or claims existing and valid on this date may proceed to entry in the usual manner after field investigation and examination." (R. 93, Ex. 15)

On July 1st, 1910, the Director of the United States Geological Survey recommended that the aforesaid temporary petroleum withdrawal be ratified and confirmed and the lands withdrawn from settlement, location, sale, or entry and reserved for classification and in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States. This recommendation was approved on July 1st, 1910, by the Secretary of the Interior and on the day following by President Taft (R. 94, Ex. 16).

By executive order dated September 2, 1912, this section, together with other lands, was permanently withdrawn and included in Naval Petroleum Reserve No. 1, and the order of July 2nd, 1910, was continued and extended in so far as it affected this section and other lands (R. 95, Ex. 17).

It is necessary to note that on January 3rd, 1901, before the section in question was surveyed, and prior to the time when the State of California could have claimed any title whatsoever to this land, it issued a contract of sale covering the same to one, Alice J. Miller. Apparently the state immediately undertook to tax this land as though it had title to the same and the said Alice J. Miller having failed to pay her taxes, the State purported on the 2nd day of July, 1902, to sell to itself the said lands for delinquent taxes, pen-

alties, costs and charges and undertook to deed the same to itself on July 2nd, 1907. On August 25th, 1908, one George Hay, and one M. W. Buffington, purported to redeem said Section 36 from the sale for taxes assessed against Alice J. Miller and applied to the state to purchase the same (Paragraph VIII of Complaint, R. 5).

The applications to purchase presented by Hay and Buffington (R. 18, Ex. I and J), provided as follows:

> "All applications, under whatsoever act, filed in the office of the surveyor general *must be retained ninety days before approval*, and must be approved (when there is no conflict) by the surveyor general at the expiration of six months, subject, however, to the provisions of section thirty-four hundred and six and thirty-four hundred and seven of this code, and all unapproved applications which have been on file over six months wherein the approval has not been demanded, or wherein the contest has not been referred to court, or a demand made for an order of reference, as provided in section thirty-four hundred and fourteen of the Political Code, shall be null and void."

On November 29, 1909, Oscar Sutro, as agent for the respondent, purchased from the said Hay for $11,000 his portion of said section, and on January 31st, 1910, secured a patent from the State of California therefor. The patent to Buffington from the State of California was issued under date of January 20th, 1910, for the balance of the said section.

Respondent did nothing towards developing said

land for oil purposes until August, 1918, when it commenced the drilling of a well thereon and discovered oil in said well on January 5th, 1919. A few months later respondent acquired under a development contract, the right to develop the balance of said section covered by the alleged patent from the state to Buffington.

On January 14th, 1914, the Register at Visalia, California, was directed to begin proceedings in the Land Office charging that the land was mineral in character containing valuable deposits of petroleum and was known to be mineral in character at and prior to the date of the survey, December 20th, 1901. No further action thereon was taken until March 2nd, 1921, when the Commissioner of the General Land Office ordered a renewal of the proceedings and an amendment of the charges.

This order was addressed to the Register and Receiver at Visalia, California, and instructed him as follows:

> "You are therefore directed to proceed in accordance with Circular of February 26, 1916 (44 L. D. 572) and in the notice provided for in paragraphs 3, 4, and 5 thereof; you will state that representatives of this office charge:
>
> "(1) That the land is mineral in character, containing valuable deposits of petroleum.
>
> "(2) That the land was known to be mineral in character at and prior to the date of the acceptance of the plat of survey of this office, January 26th, 1903." (R. 75-6, Ex. 1 and 2)

The circular of Feb. 26, 1916 (44 L. D. 572) in

accordance with which the Register was directed to proceed in prosecuting the charges against this section 36, prescribed the established and orderly method adopted by the Department of the Interior for the determination of the character of the land in question and provided for a hearing after due notice, at which both the government and the claimants would be given opportunity to present testimony under oath and to cross examine opposing witnesses. For the convenience of the court, we set forth a copy of said Circular herewith:

"CIRCULAR No. 460.

"MANNER OF PROCEEDING IN CONTESTS INITIATED UPON A REPORT BY A REPRESENTATIVE OF THE GENERAL LAND OFFICE.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 26, 1916.

TO SPECIAL AGENTS AND REGISTERS AND RECEIVERS, UNITED STATES LAND OFFICES:

The following rules are prescribed for proceedings in contests initiated upon a report by a representative of the General Land Office. All existing instructions in conflict herewith are superseded:

1. The purpose hereof is to secure speedy action upon claims to the public lands, and to allow claimant, entryman, or other claimant of record, opportunity to file a denial of the charges against the entry or claim, and to be heard thereon if he so desires.

2. Upon receipt of a report this office will consider the same and determine therefrom whether the facts stated, if true, would warrant the rejection or cancellation of the entry or claim.

3. Should the charges, if not disputed, justify the rejection or cancellation of the entry or claim the local officers will be duly notified thereof and directed to issue notice of such charges in the manner and form hereinafter provided for, which notice must be served upon the entrymen and other parties in interest shown to be entitled to notice.

4. The notice must be written or printed and must refer to the letter from this office by initial and date, as authority for issuing the notice, and must state fully the charges as contained in said letter; also the number of the entry or claim, subdivision of land involved, name of entryman or claimant or other known parties in interest.

5. The notice must also state that the charges will be accepted as true (*a*) unless the entryman or claimant files in the local office within 30 days from receipt of notice a written denial under oath, of said charges, with an application for a hearing, (*b*) or submits a statement of facts rendering the charges immaterial, (*c*) or if he fails to appear at any hearing that may be ordered in the case.

6. Notice of the charges may in all cases be served personally upon the proper party by any officer or person or by registered letter mailed to the last address of the party to be notified, as

shown by the record, and to the post office nearest to the land. When it is necessary to serve notice on the unknown heirs of a person in interest, the same must be addressed to that person at his address of record and also at the post office nearest the land. Proof of personal service shall be the written acknowledgment of the person served or the affidavit of the person who served the notice, attached thereto, stating the time, place, and manner of service. Proof of service of notice by registered letter shall consist of the report of the register and receiver who mailed the notices, accompanied by the post-office registry return receipts, or the returned unclaimed registered letters.

7. If a hearing is asked for, the local officers will consider same and confer with the Chief of Field Division relative thereto and fix a date for the hearing, due notice of which must be given entryman or claimant. The above notice may be served by registered mail. By ordinary mail, a like notice will be sent to the Chief of Field Division.

8. The Chief of Field Division will duly submit, upon the form provided therefor, to this office, an estimate of the probable expense required on behalf of the Government. He will also cause to be served subpoenas upon the Government witnesses and take such other steps as are necessary to prepare the case for prosecution.

9. The Government must appear with its witnesses on the date and at the place fixed for said

hearing, unless there is reason to believe that no appearance on behalf of the Government will be required. The officer in charge of hearings must, therefore, keep advised, as far as possible, as to whether the defendant intends to appear at the hearing. The Chief of Field Division may, when present, conduct the hearing on behalf of the Government.

10. If the entryman or claimant fails to deny the charges under oath and apply for a hearing, or to submit a statement of facts rendering the charges immaterial, or fails to appear at the hearing ordered without showing good cause therefor, such failure will be taken as an admission of the truth of the charges and will obviate the necessity for the Government submitting evidence in support thereof, and the register and receiver will forthwith forward the case with recommendation thereon to the General Land Office and notify the parties by registered mail of the action taken. In cases finally closed upon default of claimant, if application to reopen any case is filed with the register and receiver, they will forthwith forward same with recommendations to the General Land Office.

11. Upon the day set for the hearing and the day to which it may be continued the testimony of the witnesses for either party may be submitted, and both parties, if present, may examine and cross-examine the witnesses, under the rules, the Government to assume the burden of proving the charges, unless otherwise ordered.

12. If a hearing is had, as provided in paragraph 11, the local officers will render their decision upon the record, giving due notice thereof in the usual manner. When decision is adverse to the Government, notice thereof must be sent to the Chief of Field Division.

13. Appeals or briefs, if filed, must be in accordance with the rules, but need not be served upon the Chief of Field Division or Government representative in charge of the hearing.

14. The above proceedings will be governed by the rules of practice. All notices served on claimants or entrymen must likewise be served upon transferees or mortgagees.

Very respectfully,

CLAY TALLMAN,
Commissioner.

Approved:

ANDRIEUS A. JONES,
First Assistant Secretary."

The case was pending on the charge above set out and the procedure prescribed in the foregoing circular was immediately set in motion. Incidentally, in the latter part of March, 1921, the Department of Justice was called upon by the Secretary of the Navy and the Commissioner of the General Land Office to investigate the question as to whether the government should take action through the courts to protect the interests of the government until this contest had been finally determined. After various conferences between representatives of the Department of Justice and the Navy Department it was decided that the

Department of Justice was without jurisdiction to determine the title to said Section 36, that the determination of the said title was exclusively within the jurisdiction of the Department of the Interior, and that the powers of the Department of Justice were limited to protect, by injunction or a receivership, the mineral content of the land until the question of the mineral or non-mineral character of the land at the date of the approval of the survey was determined by the Department of the Interior (R. 68).

Mr. Sutro, attorney for the respondent, was in Washington at this time and in conference with various representatives of the Department of Justice and the Interior Department. It was agreed between the representatives of the government and the representatives of the transferees from the State of California that no action would be taken by the Department of Justice for the appointment of a receiver, or for an injunction against the operation of said lands, provided there should be no further development of the lands by the transferees in possession. This agreement was reached upon the understanding that the transferees from the state would endeavor to secure from the Department of the Interior an early hearing and determination with respect to the known mineral character of said Section 36 at the date of the approval of the survey thereof (R. 69).

Mr. Sutro discussed with the Secretary of the Interior and the First Assistant Secretary the question of the title to this section and on May 26th, 1921, filed

a brief setting forth his views on the subject. The opening paragraph of this brief recites:

> "This is the argument in support of the request that the Secretary of the Interior decide that in view of the previous action of the Department and of its regulations in force in January, 1903, the title to said Section (36) is vested in the State of California or its grantees." (R. 79)

As we shall show more fully hereafter, Mr. Sutro was not asking the Secretary of the Interior to find as a matter of fact that the land was not known mineral on January 26th, 1923, but to dismiss the pending inquiry into this question on the ground that the non-mineral character of the land had been previously determined by the Department.

The Secretary of the Interior on May 28th, sent to the Secretary of the Navy and to the Attorney General, a notice stating that the Standard Oil Company and the Pan American Oil Company had asked to be heard orally in the matter of the proposed proceedings by the government to determine whether or not Section 36 passed to the State of California under the School Grant; that he, Secretary Fall, had agreed to hear them on June 8th, 1921, and would be glad to have representatives of the Department named, present at that time if they so desired (R. 89-90).

In accordance with notice, the hearing was held before Secretary Fall on June 8th, 1921. First Assistant Secretary Finney was present, also C. D. Hammel appearing for the United States Land Office, D. D. Caldwell, Special Assistant Attorney General,

Commander H. A. Stuart and Harry L. Underwood, Special Assistant to the Attorney General. Representatives of the various transferees from the State of California were also present. A record of what transpired at this hearing is set forth in full, beginning on page 37 of the record, and will be discussed in detail later.

It is sufficient to say that the hearing consisted of an argument by Mr. Sutro, attorney for the transferees from the state, wherein he set forth that the character of this land had already been adjudicated by the Department of the Interior, and called for a dismissal of the proceedings ordered on the charges then pending. At the conclusion of the argument, after a number of questions were asked by Secretary Fall of Assistant Secretary Finney and others present, Secretary Fall announced "the contest will be dismissed." Notices were thereafter sent to the Commissioner of the General Land Office and by him to the Register and Receiver at Visalia, California, dismissing the proceedings in question and closing the case on the records (R. 20-21). No testimony was presented in behalf of the government nor was any argument made in behalf of the government's claim to this land.

Thereafter on February 21, 1924, the Congress of the United States, by joint resolution, directed the Secretary of the Interior to institute proceedings to assert and establish title of the government to this section, and directed the president to employ counsel to prosecute such proceedings and any suits ancillary thereto. In accordance with this joint resolution the

Secretary of the Interior on May 8th, 1925, issued his formal order reversing, vacating, and setting aside the order of Secretary Fall of June 8th, 1921, and directing the Register and Receiver at Visalia, California, to hold a hearing on the charge that the land was known to be mineral in character at and prior to the date of the acceptance of the plat of survey by the General Land Office, January 26th, 1903 (R. 21). The Register served notice of said charges upon the parties claiming title or interest in said section and called on them to appear and answer said charges and to apply for a hearing thereon (R. 24). On August 4th, 1925, the respondent filed with the Secretary of the Interior a plea in bar to the jurisdiction of the Secretary to order said hearing on the ground that the Department was without jurisdiction to consider the case at this time. This plea in bar was denied by the Secretary of the Interior on August 17th, 1925, who directed that the hearing ordered on May 8th, 1925, should proceed.

Thereupon on October 9th, 1925, the respondent filed its bill in the Supreme Court of the District of Columbia against the petitioner, the Secretary of the Interior, for a permanent injunction restraining the petitioner from continuing the proceedings directed by the order aforesaid. A motion was filed at the same time requiring the petitioner to show cause why an injunction *pendente lite* should not issue.

Petitioner answered thereafter and the show cause order was argued before Chief Justice McCoy of the Supreme Court, who filed his opinion November 23, 1925, denying the motion for the injunction *pendente*

lite. This opinion reviewed at length the history of this section 36 and the claims of the respondent thereto (R. 50-59).

The case thereafter came to a hearing on the merits before Acting Associate Justice James F. Smith, who filed his opinion on July 28th, 1926, in favor of the respondent and enjoined the petitioner from proceeding with the hearing in question (R. 95-113).

This appeal is prosecuted from the decree in favor of the respondent entered in accordance with the aforesaid opinion.

ASSIGNMENTS OF ERROR

The assignments of error upon which the petitioner relied in the Court of Appeals of this District of Columbia were as folows (R. 115-117):

> "I. That the Supreme Court of the District of Columbia erred in making the conclusion of fact set forth in Paragraph I of the final decree herein, reading as follows:
>
> 'The Secretary of the Interior had supervisory power to hold the hearing of June 8, 1921, and had jurisdiction to determine the character of section 36 as known on January 26, 1903, without a previous trial in the United States land office at Visalia, California, or appeals from decisions made by officers of the local land office at Visalia, California, and the Commissioner of the General Land Office.'

That said conclusion is contrary to the evidence in the case and the law applicable thereto.

II. That the Supreme Court of the District of Columbia erred in making the conclusion of fact set forth in Paragraph II of the final decree herein, reading as folows:

'That the Secretary of the Interior granted a hearing for the purpose of determining the issues raised by the adverse proceedings and gave notice to all the parties in interest of such hearing.'

That said conclusion is contrary to the evidence in the case and the law applicable thereto.

III. That the Supreme Court of the District of Columbia erred in making the conclusion of fact set forth in Paragraph III of the final decree herein, reading as follows:

'At the hearing on June 8, 1921, the Secretary of the Interior had before him evidence which he had a right to consider and which supported his dismissal of the adverse proceedings referred to.'

That said conclusion is contrary to the evidence in the case and the law applicable thereto.

IV. That the Supreme Court of the District of Columbia erred in making the conclusion of fact set forth in Paragraph IV of the final decree herein, reading as follows:

'The order of dismissal which was reduced to writing at his direction was a judicial determination of the non-mineral character of the land as known on January 26, 1903.'

That said conclusion is contrary to the evidence in the case and the law applicable thereto.

V. That the Supreme Court of the District of Columbia erred in making the conclusion of fact set forth in Paragraph V of the final decree herein, reading as follows:

'The order of dismissal reduced to writing as aforesaid was a judgment on the merits and its correctness can not be questioned in collateral proceedings except for fraud.'

That said conclusion is contrary to the evidence in the case and the law applicable thereto.

VI. That the Supreme Court of the District of Columbia erred in making the conclusion of fact set forth in Paragraph VI of the final decree herein, reading as follows:

'The present Secretary of the Interior, the defendant herein, is without jurisdiction to proceed with adverse proceedings to determine the character of said land, and has no jurisdiction over said land.'

That said conclusion is contrary to the evidence in the case and the law applicable thereto.

VII. That the Supreme Court of the District of Columbia erred in making the conclusion of fact set forth in Paragraph VII of the final decree herein, reading as follows:

'The order of the defendant dated May 8, 1925, purporting to reverse, vacate, and set aside the action of the former Secretary of the Interior in dismissing the adverse proceedings instituted against said land by letter dated January 14,

1914, as amended, and directing a hearing on the charges specified in said order, is without jurisdiction and said hearing would constitute a cloud upon plaintiff's title to the portions of said section 36 described in the complaint and will, unless restrained, cause plaintiff damage, for which plaintiff has no adequate remedy at law.'

That said conclusion is contrary to the evidence in the case and law applicable thereto.

VIII. That the Supreme Court of the District of Columbia was in error in enjoining this defendant, as Secretary of the Interior, from further prosecuting the adverse proceedings heretofore and on May 8th, 1925, directed by him with regard to the title to the west half and the west half of the east half and lots five (5), six (6), seven (7), eight (8), eleven (11), and twelve (12) of section thirty-six (36), township thirty (30) south, range twenty-three east, Mount Diablo base and meridian, Kern County, California, and from ordering any hearing or directing any hearing to proceed in or before the United States Land Office at Visalia, California, or in or before the General Land Office or before himself as Secretary of the Interior, regarding the issues raised in said adverse proceedings, for the reason that said injunction is contrary to the law applicable to this case and is an illegal interference with and a restraint upon the executive and legislative branches of the Government."

Since the Court of Appeals of the District of Columbia affirmed the judgment of the Supreme Court

of the District, the foregoing assignments of error are the basis of this appeal. They may be summarized by the statement that the Court of Appeals of the District of Columbia erred in affirming the judgment of the Supreme Court of the District and in holding that the action of Secretary Fall on June 8th, 1921, in dismissing the contest then pending against this section in the Interior Department was an adjudication of the known non-mineral character of the land as of January 26th, 1903.

ARGUMENT

I.

UNTIL TITLE HAS PASSED FROM THE U. S. THE PUBLIC LANDS ARE EXCLUSIVELY WITHIN THE JURISDICTION OF THE DEPARTMENT OF THE INTERIOR

It is admitted by both parties that the Department of the Interior has jurisdiction over all public land questions and that the Secretary of the Interior has the final and exclusive decision as to the character of public lands.

Catholic Bishop of Nisqually v. Gibbon, 158 U. S. 155;

Burke v. Southern Pac. R. R. Co., 234 U. S. 669;

U. S. v. Schurz, 102 U. S. 378.

The State of California and its transferees are entitled to claim Section 36 as school lands under the Grant of 1853 only in the event that said lands were

not known mineral on January 26, 1903, the date of the approval of the survey.

Mining Co. v. Consolidated Mining Co., 102 U. S. 167;

Mullan v. U. S., 118 U. S. 271.

The determination of the mineral or non-mineral character of said Section in 1903 can be made only by the Department of the Interior, and until such decision has been finally made, this Department, representing the Federal Government, has not parted with jurisdiction over the lands as part of the public domain. Until the matter is closed by final action, the proceedings of an officer of the Department are as much open to review or reversal by himself or his successor as are the interlocutory decrees of a court open to review upon the final hearing.

New Orleans v. Paine, 147 U. S. 261;

Mich. Land and Lumber Co. v. Rust, 168 U. S. 589.

It has been the long established practice of the Department of the Interior to proceed in accordance with this principle, and so long as legal title remains in the Government the lands are considered public and under the jurisdiction of the Interior Department. The Secretary of the Interior has repeatedly exercised power and authority to review and reverse, upon the same record, the decisions of a preceding Secretary.

Parcher v. Gillen, 26 L. D. 34;

Cagle v. Mendenhall, 26 L. D. 177;

Harkrader et al. v. Goldstein, 31 L. D. 87;

Brooks v. McBride, 35 L. D. 441.

II.

The Bill Pleads Three Inconsistent Grounds for Relief.

The bill alleges three different adjudications at three different times and asserts that each one was a determination of a question which could be adjudicated only once by the Department. Three inconsistent grounds for relief are set up in the bill. Paragraph IV alleges that the non-mineral character of the land was determined by the relief from suspension in 1904. Paragraph V recites that the regulations of the Department in force in 1903 fixed the non-mineral character of the land as a rule of property and vested title in the State. Paragraph X alleges that Secretary Fall adjudicated this question in 1921. Yet respondent vigorously contended in the lower courts that one determination of this question would exhaust the powers of the Department. But if this issue had actually been determined in 1903 or in 1904, Secretary Fall had no jurisdiction over the question in 1921.

While the trial court based its decision on the ground that Secretary Fall adjudicated this question in 1921 and petitioner's principal argument will be addressed to that point, it is in order to dispose definitely at this time of the two grounds for relief set forth in Paragraphs IV and V of the bill. We shall then examine in detail the Sutro brief and argument before Secretary Fall in order to ascertain what, if anything, the

order of dismissal determined. In the lower courts respondent strenuously opposed the examination of the Sutro brief and argument. But as we shall later show, these documents are in effect part of the pleadings, which an appellate court may always examine to determine the nature of the issues, the relief requested, and the action taken in response thereto.

III.

The Order of 1904 Relieving Certain Lands From Suspension Was Not an Adjudication of Their Non-Mineral Character

By telegram of February 28th, 1900, to the Register and Receiver at Visalia, California, the Land Commissioner suspended from disposition until further orders, some forty-six townships aggregating in excess of 1650 square miles. Township 30 South, Range 23 East, in which the lands here involved were located, was included in this order (R. 11). This telegram was followed on July 19th, 1900, by a letter from the Land Commissioner to the Register and Receiver advising:

> "Suspension from disposition of certain townships by telegrams of February 26th and 28th last, will be continued for a reasonable time pending inquiry as to the true character of the lands which is now in progress. *These suspen-*

sions do not include mineral lands." (Italics ours) (R. 11)

It is manifest that the suspension here ordered was not absolute, but simply a suspension from agricultural entry. The lands were still open to entry and proof under the mining laws. In fact, as explained by Mr. Sutro in his brief and argument before Secretary Fall, this withdrawal was made on the petition of some 800 miners who charged that a great deal of mineral land in California was being acquired by agricultural entries and that they were being deprived of the opportunity of filing mineral entries (R. 37-8).

The southern portion of Township 30 South, Range 23 East, which included the Section 36 here involved, was surveyed in 1901 and 1902, and the survey accepted January 26th, 1903. The surveyor returned Section 36 as mineral in character and in the absence of any further proof on this subject, this return was *prima facie* evidence of the fact and fixed the character of the land accordingly. Any claimant or entryman alleging to the contrary would have the burden of proof.

Tulare Oil Co. v. S. P., 29 L. D. 269;
Barden v. N. P., 154 U. S. 288, 320.

On March 7th, 1903, the State of California filed Application No. 792, with the General Land Office for indemnity land, in the place of the said Section 36 on the ground that the latter was mineral land. This application was on file with the Department until November 20, 1905, when the state applied to amend the same by the substitution of new base lands (R.

49, Ex. 3). The state of California therefore during this period recognized and acknowledged the mineral character of Section 36. It had presumably satisfied itself that this section did not fall within the terms of its grant and had selected other lands in lieu thereof.

Rice v. California, 24 L. D. 14.

So long as its application aforesaid remained on file the State had, in fact, waived any claim whatsoever to this land under its school land grant.

California v. Deseret Water Co., 243 U. S. 415.

In 1903 a special agent of the Land Department made an examination of the lands covered by the withdrawal order of 1900 and reported those upon which he found actual producing wells of commercial quantity. On April 5, 1904, the Acting Commissioner of the Land Office wrote a letter to the Register and Receiver at Visalia, stating:

> "I am in receipt of the agent's report to the effect that certain of the lands so suspended are being developed for their deposits of mineral and that numerous oil wells have been sunk which have proved to be good producers of mineral. Other townships and portions of townships, have not been developed at all for wells that have been sunk have been proved to be barren. The lands upon which he states active mineral development is in progress will be allowed to continue suspended, but as to the following tracts where no mineral has been discovered it is believed that no good reason exists for further suspension. Ac-

cordingly the lands hereinafter described are hereby relieved from suspension." (Here followed list of 16 townships or portions of townships, including T. 30 S., R. 23 E.) (R. 16-17, Ex. F)

This order relieving said lands from suspension merely opened them again to agricultural as well as to mineral entry. Any one filing on said lands would have to make his proof as to character just the same after this order as before. It was simply an administrative act and of no more force or effect as an adjudication or determination of the mineral character than was the approval of the survey in 1903 with the surveyor's mineral return attached. The order to Agent Ryan directing the examination in question was dated December 10th, 1903. His report giving the results of his work is dated March 22nd, 1904. It is obvious that it was physically impossible for a special agent to make other than the most cursory examination of the large area covered by the forty-six townships within this period.

The conclusive proof of the fact that neither the report of the Special Agent above referred to nor the order of relief from suspension of 1904 amounted to an adjudication that these lands were not known mineral, is the decision of the Supreme Court in the case of *United States v. Southern Pacific*, 251 U. S. 1. In this case the Supreme Court found that some eight other sections of land in the same township in which the present Section 36 is located, one of said sections being immediately adjacent to Section 36, were known to be valuable for oil in 1904. This same decision disposes of any serious value imputed to the

examination by Agent Ryan, and his report thereon, in the following language (page 14):

> "The railroad company places some reliance on the fact that after the presentation of the original selection list and before the substituted one was tendered a special agent of the General Land Office examined the lands and reported them as non-mineral. But there is nothing in this that can help the company. The agent's report was made in another connection and was not considered by the land officers when they approved the selection. It did not relieve the company from showing that the lands selected were not mineral; nor did the company understand that it had any such effect. Mr. Eberlein knew of the report several months before he and other officers of the company became troubled over the proposed oil lease and concluded that, if given publicity, it would endanger the pending selection. Besides, if the report could be considered here, it would be without any real evidential value, for it appears from testimony given by the agent at the hearing that he was not a geologist or familiar with oil mining and that his examination of the lands was at best only superficial."

IV.

The Promulgation of the Regulations of March 6th, 1903, by the Interior Department Was Not a Determination of the Non-Mineral Character of the Land in Question

Respondent pleads in Paragraph V of the complaint that on March 6th, 1903, being thirty-eight days after the approval of the survey of the section in question, the Department of the Interior put into effect certain rules and regulations providing that a state would not be permitted to make selection in lieu of land within a school section alleged to be mineral in character, unless there was mineral actually discovered or exposed upon the base land. The paragraph further alleges that since no mineral had been discovered on this land prior to 1919, nor was there any mineral development in the township prior to 1911, the aforesaid rule and regulation became a rule of property and vested title in the State of California as of the date of the acceptance of the survey thereof.

On March 7th, 1904, the State of California filed its Application No. 792 with the Register and Receiver of the Visalia Land Office for indemnity land in lieu of said Section 36 on the ground that the latter was mineral in character. This application was accepted and pending in the Department until November 20th, 1905, when the state made application to amend the same by substitution of other base lands (R. 49-50, Ex. 3). The unquestionable effect of this procedure on the part of the state was to estop

it and its grantees from claiming any rights based on the non-mineral character of the land. The state did in fact, for this period, waive any claim to the land in question, because it was setting up affirmatively the mineral character of the same. Under the Act of Congress this constituted a waiver.

Sec. 2275 Rev. Stat. of the United States, as amended in 1891 (26 Stat. 796) provides in part:

> "• • • And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory where sections sixteen or thirty-six are mineral land, or are included within any Indian, military, or other reservation, or are otherwise disposed of by the United States: Provided, where any State is entitled to said sections sixteen and thirty-six, or where said sections are reserved to any Territory, notwithstanding the same may be mineral land or embraced within a military, Indian, or other reservation, the selection of such lands in lieu thereof by said State or Territory shall be a waiver of its right to said sections. • • •"

This section has been construed by the Land Department and by the Supreme Court of the United States as meaning that the state does waive its right to a school section when it applies for other lands in lieu thereof.

California v. Deseret Water Co., 243 U. S. 415;

Gregg v. Colorado, 15 L. D. 151 (1892);

Rice v. California, 24 L. D. 14 (1897);

State of California, 28 L. D. 57.

The Department regulations of 1903 were in effect rules of evidence prescribing the kind of proof which the Department proposed to require in support of an application by a state to exchange base school lands.

Respondent argued, both before Secretary Fall, and in this case, that since the state under these rules would not have been permitted to exchange Section 36 for lieu lands, it must follow that the state was entitled to retain this section under the school grant. Put in another form, it says that if the Rules of 1903 had been applied to the state's application to exchange this land, it would have resulted in a denial of the application, and the denial of the application would have been a determination of the non-mineral character of the land.

The answer to this argument is that in fact the rule never was applied to this application, nor was this application ever denied by the Interior Department. The State of California by selecting other lands in lieu of Section 36 had, under Section 2275 of the Revised Statutes above quoted, voluntarily waived any claim to this land, during the period that such application was on file with the Department.

It is also important to note that the so-called Rules of 1903, in so far as they purported to prescribe that land would not be considered mineral in character by the Interior Department unless there was mineral actually exposed or discovered upon the precise lands in question, were by no means uniformly followed by the Department.

In *Kern Oil Company v. Clotfelter*, 30 L. D. 583 (May 8, 1901), Clotfelter had selected lands in the

Visalia Land District in lieu of lands in the Forest Reserve and filed the necessary affidavits and proof. Kern Oil Company had protested on the ground that the lands were mineral. The Acting Secretary of the Interior instructed the Commissioner of the General Land Office to hold a hearing and directed that evidence bearing on the character of the selected lands be not restricted to the discovery or development of mineral therein and to their geological formation, but might extend to the discovery and development of mineral in adjacent lands and to their geological formation.

This case was again before the Department and the instructions approved on October 28th, 1904. Reported in 33 L. D. 291.

The matter of the character of evidence to be considered in passing upon alleged coal lands was considered at length by Secretary Hitchcock in his opinion of October 26th, 1905. 34 L. D. 194. The Secretary here reviewed at length the various decisions of the courts and of the Land Department and found that nowhere has outside geological evidence been held inadmissible, and ruled that reliance must frequently be had upon such evidence as guides the geologist and the coal expert.

It is evident from the foregoing that the so-called Rules of 1903, were not uniformly adhered to and they were virtually abrogated by Secretary Hitchcock's decision above quoted in October, 1905. In any event, the *Diamond Coal* Case, 233 U. S. 236 (1914), and the *Southern Pacific* Case, 251 U. S. 1 (1919), had firmly fixed the principle that the mineral character

of land must be determined by a consideration of the geological indicia and structural conditions upon the surrounding area as well as the lands in question, when the hearing before Secretary Fall was had in June, 1921.

The trial court's finding that Secretary Fall had held a hearing and rendered a decision on the merits on the charges then pending against Section 36 cannot be supported by the so-called "rule of property" argument unless this court is prepared to announce that the existence of a rule of evidence is the equivalent of an adjudication, and to so announce in the face of the fact that the rule of evidence was not uniformly followed nor was it ever applied by any official of the government in the consideration of the charges pending.

It must be admitted that the rule in question had been cancelled and abrogated by the decisions of the Supreme Court of the United States many years before this question came before Secretary Fall. Upon what possible ground could it be contended that the existence of a rule of evidence, long since cancelled and annulled, can be invoked to take the place of a positive duty imposed upon the Department of the Interior, to-wit, the determination of the known character of this land in January, 1903? This claim falls of its own statement.

V.

The Equities in This Case Are Adverse to the Claim of Respondent

Counsel for respondent in the hearing before Secretary Fall, and in his brief, referred at length to the "many and compelling equities" in claimant's favor. A careful examination into the history of this section demonstrates that respondent can show no equities as against the government. On the other hand the claim of the government to this land, and particularly the position that the mineral character of the same had never been determined by the Interior Department, has been consistently maintained from the beginning, and long prior to the initiation of any claim in behalf of private individuals thereto. Any rights set up by respondent or its predecessors in title, have been acquired with full knowledge of the fact that they were dealing with lands in which the government still claimed an interest and had consistently asserted that it had not yet determined the mineral character thereof.

No rights adverse to the government could possibly have been initiated by the attempts of the State of California in 1901 to sell this land to Alice J. Miller, to tax the same in 1901, to foreclose any purported lien for such taxes, nor by the attempt of Hay and Buffington in August, 1908, to redeem said land from such alleged taxes. The state could not possibly claim any interest in this section prior to January 26, 1903, when the survey was accepted and approved.

Hay and Buffington also undertook to buy this section from the state (R. 18-19, Ex. I and J). Their applications to the State Surveyor General were dated August 24th, 1908, and were probably filed a few days later, although the exact date of the filing does not appear. Under the provisions of the California Statute, extracts from which are printed upon the applications themselves, all applications had to be retained in the office of the Surveyor General ninety days before approval. There is nothing in the record to show when such approval was had except that the State of California issued its purported certificate of purchase upon said applications on January 5, 1909, and thereafter the applicants paid the purchase price to the state for said land (Par. VIII, Complaint. R. 56).

However, on September 14th, 1908, Section 36, together with other lands located in Kern and San Luis Obispo Counties, was ordered temporarily withdrawn from agricultural entry pending examination and classification by the United States Geological Survey (R. 91, Ex. 12). This order was part of the official public records on file in the United States Land Office at Visalia, California, and in the records of the Department of the Interior at Washington, D. C. It follows that practically four months before the issuance of certificates of purchase to Hay and Buffington, and any payments by them thereon, the lands in question were withdrawn from entry pending classification by the Geological Survey. These purported purchasers are charged with knowledge of the government's adverse attitude towards these lands and

of the position which the Interior Department has consistently maintained to the effect that the mineral character of Section 36 had never been adjudicated by the Department. On June 4th, 1909, the Director of the Geological Survey classified all of the township within which Section 36 is located as oil lands (R. 92, Ex. 13). Three days later the Secretary of the Interior continued the withdrawal of this section, together with other lands, pending consideration of legislation on the question (R. 92, Ex. 14).

On September 27th, in the same year, the Acting Secretary placed this section, together with other lands, in Petroleum Withdrawal No. 5. The order recited:

> "In the aid of proposed legislation affecting the use and disposition of petroleum deposits on the public domain all public lands in the accompanying lists are hereby temporarily withdrawn from all forms of location, settlement, selection, filing, entry or disposal under the mineral or non-mineral public land laws." (R. 93, Ex. 15)

The foregoing orders were all part of the official public records on file in the United States Land Office at Visalia, and in the records of the Department of the Interior at Washington, D. C. (R. 93, Ex. 15), when on November 29th, 1909, Oscar Sutro purchased from Hay the latter's interest in 480 acres of said Section 36. The claim of the government in respect to this land, and the attitude of the Department that the same had not theretofore been determined to be non-mineral is certainly shown by these public records, and neither Hay, Buffington, Sutro nor Car-

man, who undertook on August 21st, 1909, to buy 158 acres of this section from Buffington, can claim that they were innocent purchasers without knowledge of the government's adverse claim to this land when they spent their money. The records charge them with knowledge of the government's claim and show that they purchased these lands with their eyes open and proceeded at their peril.

The subsequent history of the section, so far as the government's claim is concerned, is wholly consistent with its attitude above noted. On July 1st, 1910, the Secretary of the Interior recommended to President Taft the withdrawal of certain lands including the township within which Section 36 is located, for a petroleum reserve. This recommendation was approved by President Taft on July 2nd, 1910, and returned to the Department of the Interior for appropriate action (R. 94, Ex. 16).

By executive order of President Taft on September 2, 1912, Naval Petroleum Reserve No. 1 was created and Section 36, together with other sections, placed therein (R. 95, Ex. 17).

On January 14th, 1914, the Commissioner of the General Land Office directed the Register and Receiver at Visalia to hold a hearing on charges against Section 36, reciting:

> "1. That the land is mineral in character containing valuable deposits of petroleum.
>
> "2. That the land was known to be mineral in character at and prior to the date of survey December 20, 1901." (R. 35, Ex. 1)

No action was taken upon these charges which re-

mained pending until March 2, 1921, when they were amended by the Commissioner to charge that the land was known to be mineral in character at and prior to the date of the acceptance of the plat of survey on January 26, 1903. The Register and Receiver was directed to proceed in accordance with the department's circular of February 26, 1916, copy of which has been set forth on pages 12-16 of this brief (R. 75-6, Ex. 1)

Respondent began its first well on this section in 1918 and struck oil there in January, 1919.

It is apparent from the foregoing that respondent's position is devoid of any support from the equities. It did not purchase the land until after the same had been withdrawn from mineral entry pending proposed legislation and after it had been classified as oil land by the geological survey. Before it undertook any drilling on this section, the land had ben definitely and permanently withdrawn from all manner of entry and included within Naval Reserve No. 1, by executive order of President Taft. In addition thereto, at the time respondent began drilling, the contest ordered by the Commissioner of the General Land Office on January 14th, 1914, had been pending and undisposed of four years.

Some point was made by Mr. Sutro in his argument before Secrtary Fall and also is recited in paragraph VII of the complaint, to the effect that on January 24, 1908, the Land Office at Visalia had certified to the State Surveyor General that there was no claim shown in the records of his office, adverse to that of the State of California to said Section 36. The au-

thority of the Local Land Office to issue such a certificate, and the significance of the same, has been disposed of by both the Interior Department and the Supreme Court.

Secretary Hitchcock on January 20th, 1902, 31 L. D. 212, advised the Commissioner of the General Land Office as follows:

> "While it is competent and proper for the local officers, in response to legitimate inquiries, to give such information as is shown by the records of their office, as for instance, whether a given Section 16 has been returned as mineral or non-mineral, or whether any portion thereof is or is not included in a homestead or other entry, it is not *competent* or *proper* that these officers should also undertake to state in a manner which may be erroneously accepted as a certification or authorized statement that the section has or has not passed to the state."

In *Cosmos Co. v. Gray Eagle Co.*, 190 U. S. 301, the Local Land Office had given a similar certificate which certificate was alleged to be a decision that the selector of lieu lands had complied with all the provisions of the statute so as to acquire a complete equitable title. The court says on page 313:

> "They (the local land officers) entered that selection upon the official records of the land office and they certified that it was free from conflict, and that there was no adverse filing, entry or claim thereto, but it cannot be said that they decided that the selector had complied with the provisions of the statute or that he had done

all that he ought to have done in order to acquire his alleged complete, equitable title.

"Their certificate that the land was free from conflict was simply a certificate as to what appeared on the books of the local office, and the same may be said of the statement that there was no adverse filing, entry or claim thereto upon such books."

Respondent cannot create a title on grounds of estoppel or based upon the so-called equities. This was the dominant note in Mr. Sutro's brief and argument before Secretary Fall and is again advanced in the bill of complaint herein. But these considerations are of no avail unless and until it is shown that title has actually passed from the government. The government cannot be divested of title until there has been an adjudication by the Interior Department that this section was not known mineral on January 26, 1903. No such adjudication has ever been had. A similar situation was before the Supreme Court in the case of *Lee Wilson & Co. v. United States*, 245 U. S. 24. Here the original survey had erroneously shown the existence of a lake within a certain township when in fact there was none. The position of the alleged lake was shown by meander lines upon the survey and a patent was issued by the government to the State of Arkansas describing the entire township. Approximately fifty years later the government investigated this situation and discovered the error. The area embraced within the meander lines was surveyed and thrown open to the public whereupon this contest arose between the United

States and the grantees from the state who claimed a portion of the land under alleged riparian rights. The court held against the claim of riparian rights and said (p. 32):

> "Finally, the suggestion that as the defendant holding under the State acquired its rights before the mistake was discovered in reliance upon the actions and representations of the officers of the United States as to the existence of riparian rights in accordance with the state law as the result of the meander line, the United States should not be permitted to correct the mistake committed as to the meander line and thus protect its title, but in a different form restates the argument which we have already disposed of. Besides, if for the sake of argument we assume the existence of the equitable considerations insisted upon, it is manifest that the prayer for their enforcement is in the nature of things beyond the sphere of judicial authority however much relief on the subject may be appropriately sought from the legislative department of the government."

VI.

Secretary Fall's Order of Dismissal Was Not a Determination of the Non-Mineral Character of the Land as of January 26th, 1903

Petitioner is entitled to a reversal of the decree in this case for the reason that the judgment of the Supreme Court was based upon error in that it found

as a fact that Secretary Fall granted the hearing June 8th, 1921, for the purpose of determining the issues raised by the adverse proceedings then pending, that he had before him evidence which he had a right to consider and which supported his dismissal of said adverse proceedings, that the order of dismissal was a judicial determination of the non-mineral character of the land as known on January 26th, 1903, and that said order of dismissal was a judgment on the merits. These points are covered by assignments of error II, III, IV and V and will be discussed together.

The basic question involved in this case is what did Secretary Fall decide by this order of dismissal? The notices sent to the Navy Department and the Attorney General by Secretary Fall's administrative assistant, Mr. Safford, recited that the Standard Oil Company and the Pan American Oil Company had asked to be heard orally in the matter of the proposed proceedings by the government to determine whether or not said section passed to the State of California under its School Grant, that the Secretary had agreed to hear these on June 8, 1921, and would be glad to have representatives of the departments present if they so desired. The notices sent by First Assistant Secretary Finney were less specific and simply stated that the Secretary had agreed to hear representatives of the Standard Oil Company and Pan American Oil Company orally on June 8th, with reference to the proceedings instituted relative to Section 36 (R. 89-90). There was nothing in either one of these notices which were addressed to the Attorney General's office and to the Secretary of the Navy which gave

the slightest intimation that Secretary Fall proposed to conduct a hearing upon the merits of the issues involved by the proceedings then pending in the Land Office.

On May 26th, 1921, two days before said notices of hearing were sent out, Mr. Sutro in behalf of the claimants filed a brief with Secretary Fall setting forth his argument and authorities. The note of transmittal indicates that matters set forth in the brief had been discussed by him with Secretary Fall on the previous day (R. 89). An examination of this brief demonstrates conclusively, we believe, that Mr. Sutro was not asking the Secretary to decide as a matter of fact, that the lands in question were not known mineral lands in January, 1903, but rather to decide that the Department had heretofore adjudicated the non-mineral character of the lands and settled the question, and the issue was a closed question so far as the Department was concerned (R. 79-89).

It is important to note that in November, 1919, the case of *United States v. Southern Pacific* (251 U. S. 1) was decided. This was an action brought by the government to cancel a patent issued in December, 1904, to the Southern Pacific covering certain lands in the same township in the Elk Hills area, part of which were in fact immediately contiguous to the Section 36 here involved.

The lands in question were sought by the railroad as lieu land to replace lands of like area lost in the primary grant to the road. The court found that the affidavits of the company's land agent filed with the applications for such lieu lands in November,

1903, and again in 1904, reciting that the lands had been examined by the agents of the company and that none of the lands returned in the list were believed to be mineral lands, were false; that the company in 1902, upon the recommendation of its geologists, had withdrawn from sale, lands adjacent to those in suit because they were in or near oil territory; that in 1903 the company had selected certain adjacent and adjoining lands to be transferred to its fuel oil company; and that in fact, the officials of the company were seeking to secure the lands in question believing that they were chiefly valuable in their mineral content. The court said, after discussing the general geological conditions upon the Elk Hills area and the surrounding country:

> "Geologists and men of wide experience and success in oil mining—all of whom had examined that territory and some of whom had been familiar with it for years—were called as witnesses by the Government and gave it as their opinion, having regard to the known conditions in 1903 and 1904, as just outlined, that the lands were valuable for oil, in that an ordinarily prudent man, understanding the hazards and rewards of oil mining and desiring to engage therein for profit, would be justified in purchasing the lands for such mining and making the expenditures incident to their development, and in that a competent geologist or expert in oil mining, if employed to advise in the matter, would have ample warrant for advising the purchase and expenditure.

"Other geologists and oil operators, called by the company, gave it as their opinion that the lands were not, under the conditions stated, valuable for oil; but as respects the testimony of some it is apparent that they were indisposed to regard any lands as within that category until they were demonstrated to be certainly such by wells actually drilled thereon and producing oil in paying quantities after a considerable period of pumping. This is a mistaken test, in that it takes no account of geological conditions, adjacent discoveries and other external conditions upon which prudent and experienced men in the oil mining regions are shown to be accustomed to act and make large expenditures. And the testimony of some of these witnesses is weakened by the fact that their prior acts in respect of these lands, or others in that vicinity similarly situated, were not in accord with the opinions which they expressed." (pp. 12-13)

It is thus manifest that when Mr. Sutro applied for the oral hearing before the Secretary, both he and the Secretary were aware that no hearing on the merits as to Section 36, could be held without the taking of testimony, and in all probability very extensive testimony, upon the structural conditions and geological indications not only upon the section in question, but upon the general area surrounding the same. This was the law of the case established by the Supreme Court according to the view of Assistant Secretary Finney as expressed by him at the oral hearing and prior conferences he attended. Since there was no

provision either in the rules or practice of the Interior Department for taking testimony on disputed points before the Secretary, it was obvious that no hearing on the merits could have been contemplated at the oral hearing on June 8th, 1921.

Mr. Sutro's entire argument, set forth in his brief and his remarks at the hearing, was that it was not necessary to go into this question of the surrounding geological conditions or to try out the charges then pending before the Department because the mineral character of this section had already been determined and adjudicated, and the title vested in his clients. Moreover, this insistence upon a prior determination of the non-mineral character of the land has never been abandoned by respondent. It is reiterated in the bill of complaint on which this suit rests.

This was an illogical position for the transferees to take in asking for an oral hearing before Secretary Fall. If in fact the non-mineral character of the land had previously been adjudicated by the Department, then the title had passed from the United States and the Department of the Interior had no further jurisdiction and could make no further ruling concerning the same.

Wyoming v. U. S., 255 U. S. 489.

On Mr. Sutro's theory of the situation his hearing should have been before the courts and not before the Secretary of the Interior, whose Department had no further jurisdiction after it had once adjudicated the non-mineral character of the land and the title had passed from the Government.

Brown v. Hitchcock, 173 U. S. 473.

Paragraph IV of the complaint, after setting forth a copy of the report of the Special Agent of March 22, 1904, alleges:

> "Thereupon by order dated April 5th, 1904, the Acting Commissioner of the General Land Office relieved said Section 36, and said other lands, from suspension and *determined* that said Section 36 and said other lands were non-mineral lands and plaintiff represents that thereupon the title of the State of California to said Section *was finally determined and settled.*" (Italics ours) (R. 4)

In paragraph V of the complaint, after quoting rule 2 of the Regulation of the Department of March 6, 1903, and reciting that no mineral had actually been discovered on Section 36 at the date of the acceptance and filing of the survey, it is alleged:

> "That pursuant to the rules and decisions of the Department of the Interior the title of the State of California and its grantees to said Section 36 became vested in the State of California as of the date of the acceptance of the survey thereof."

The extracts hereinafter set forth from Mr. Sutro's brief show the error of the lower court's findings that Secretary Fall was conducting a hearing upon the merits on the adverse charges against this section. It certainly cannot be contended that Secretary Fall did more than he was asked to do by Mr. Sutro as attorney for the transferees.

Not once did Mr. Sutro ask the Secretary to decide the question raised by the pending charges, of

whether or not this Section was known mineral land in 1903. His entire efforts were devoted to avoiding such an investigation and inquiry and to persuading the Secretary that "It would serve no purpose" to proceed with the pending hearing and investigation on this point before the local land office. The result is, as pointed out by Chief Justice McCoy, in his opinion denying the injunction *pendente lite*, that this primary question has never been decided by the Secretary of the Interior.

The following extracts taken from Mr. Sutro's brief establish this fact. The italics are ours except where otherwise indicated. The opening paragraph of the brief recites:

> "This is the argument in support of the request that the Secretary of the Interior decide that in view of the previous action of the Department and of its regulations in force in January, 1903, the title to said section is vested in the State of California or its grantees." (R. 79, Ex. 5)

The following paragraphs emphasize the same points, viz:

> "Section 36 of 30-23 was identified by the survey, of which the official plat was approved in Washington on January 26, 1903. In 1904 there was a *determination* by the Commissioner of the General Land Office that the section was non-mineral." (R. 79, Ex. 5)
>
> "This restoration of the land to 'disposition under the agricultural land laws' is necessarily a *determination* of its non-mineral character.

The order contains, moreover, the specific finding that 'no mineral has been discovered' in township 30-23." (R. 80)

"In 1919 sixteen years after the survey, fifteen years after *determination* that the land was non-mineral, ten years after purchase from the State, the present owners drilled the property and discovered oil. Immense investment has been made on it, and now, seven years after these proceedings were instituted, of which no notice was taken by any one, it is proposed that the Government shall assert that the State took no title to the land because it was well known to be mineral at the date of the survey. It is proposed to assert the mineral character of the land in 1903 not because of the discovery of mineral on the section (which was the test under repeated regulations and decisions of the Department for determining the mineral character of a school section in place *see infra*) but because under the rule of the *Diamond Coal & Coke* case the geological structure was such as to establish the character of the land as well known mineral land." (R. 81)

"*Such a determination was had here.* It is said that the report on which it was based was superficial. The State of California and its bona fide grantees are not responsible for that. The State of California could not look behind the order of the Department restoring the land to entry as non-mineral. The Department's general finding may not avail a homestead entryman, or a

desert entryman, or an applicant for railroad patent or a lieu land section. In each of these cases the applicant selector or entryman is required to prove the non-mineral character of the land. A *general determination by the Department* may aid him but it is not necessarily conclusive. But the case is *different where a school section* in place is involved. There the only proceeding is a determination, ex parte or otherwise by the Interior Department to fix the character of the land. That is why this case differs from the *Elk Hills* case, the Scrippers' cases, etc. And it should also be noted that in railroad grants the railroad's belief and representations are of the essence of the matter." (R. 82)

"First—*We are not asking for a dismissal of the proceedings now pending in the Land Office.* We are asking the Department to decide that the proceedings should be closed on the ground that (a) The previous adjudication of the non-mineral character of the land, made seventeen years ago, upon which the State acted in selling the land twelve years ago, *determined* its character in favor of the State and its bona fide grantees. (b) At the date of the survey in 1903 the doctrine of the Diamond Coal & Coke case decided in 1914 and of the Elk Hills case was not applicable to this section; that as a *section in place* title to this section vested under the prevailing rules and decisions of the Department, no mineral having been discovered on the *section in place*; that this became and is the rule of property for

this case." (All except first two lines, Mr. Sutro's Italics) (R. 86)

"There is no reason why this decision as to the title of the State should not be made now without putting the State to the enormous and costly burden of proof, such as was in issue in the *Elk Hills* case. In other words, if the absence of clear proof of the mineral character of the section in 1903 in the shape of discovery of mineral was sufficient to characterize the land as non-mineral under the regulations and repeated decisions of the Department, it will make no difference that by the application of the principles of the *Elk Hills* case it could be successfully shown that the land within the reasoning of that decision was believed to be mineral lands." (R. 87)

"Certainly the equities of this situation entitle us to a decision now on the question which in any event will ultimately have to be decided by the Secretary of the Interior. The issue which we now tender can be decided just as well at this time as at the end of a protracted hearing on the facts. The fact that the land was tendered when its character was unknown in 1916 to the government, the long lapse of time since the approval of the survey, *the determination* of the non-mineral character of the land by the Department, the sale by the state of the land in reliance on *that determination*, the many years thereafter in which no claim adverse to the State was brought to its attention, although an adverse pro-

ceeding was ordered and allowed to lie dormant for seven years, the fact that without objection the purchasers from the State were allowed to develop the land, the proceedings slumbering for seven years on top of ten years after the survey—these facts I submit offer equities which entitle the State to ask that the *Secretary of the Interior should exercise his clear jurisdiction and decide the question presented at this time.*" (Mr. Sutro's Italics) (R. 87)

"Third—Nor are we asking the Department to make a ruling which is at variance with the *Elk Hills* decision. Whatever force the findings of fact in that case may have in a case that is free of fraud, this case is, in no event, within the scope of the Elk Hills decision. The *determination* by the Department in 1904 of the land as non-mineral may have been only evidence in favor of the railroad in that case, and very slight evidence under the peculiar circumstances of the case; in our case we submit *it was an adjudication.*

"The court in the Elk Hills case said that the Ryan report could not help the railroad because 'the agent's report was made in another connection,' and that connection I submit was precisely the *ex parte determination* by the Department of the character of the land for cases where such *ex parte determination* is the only determination possible." (R. 88)

In other words, Mr. Sutro was urging Secretary

Fall to prosecute no further the charges in the Land Office but to close this contest on the ground that,

1. The Department had *already determined* the *known mineral character.*

2. That title was vested in the State under the so-called rule of property, and

3. That it was inequitable to prosecute this contest in view of the various delays and vacillations of the Government.

The foregoing were the considerations which had been urged by Mr. Sutro upon Secretary Fall at the time the latter sent out the notices of the hearing of June 8th, 1921. The notices contain nothing which indicates any intention on the part of the Secretary to interfere with the orderly procedure prescribed by the rules of the Department for the trial of the charges pending, or to determine the merits himself by any short cuts, nor was he asked by Mr. Sutro, either in his brief or in his oral argument to do so. We are fortunate in having a stenographic record of everything that took place at the hearing itself, which is attached to the answer as Exhibit 2 (R. 37-49). In opening his argument, Mr. Sutro said:

> "This is an application, Mr. Secretary, to have the Department of the Interior exercise its jurisdiction to determine that section 36 in township 30 south, range 23 east, in Kern County, in California, is a school section in place, title to which is vested in the State, and that the title has been so vested since the day of the survey and the approval of that survey, which was, if I remember correctly, March, 1903, or possibly

since the filing of the approved plat, which would be a month later." (R. 37)

In discussing the Ryan examination of 1904, Mr. Sutro said:

"He (Ryan) made an investigation, and he made a report, and his report was that Township 30 South, Range 23 East, which includes this section, was not mineral. The Secretary of the Interior thereupon restored that township and a great many other lands to agricultural entry. And we claim that that was an *adjudication* of the character of this land." (R. 38)

"After the Navy had declined that tender the land lay dormant, as it had been lying dormant for thirteen or fourteen years, until the great oil shortage of 1919, when the Standard Oil Company, which drilled everywhere where a drill could be dropped at that time with any hope of success, drilled this section and discovered oil. Now that was fifteen years after the land had been classified by the Department. It was nine years after the Government had indicated that it might assert a claim to the land, and I submit that on the theory of laches and limitations alone it is an inequitable proceeding, and one that Government, if there is ever to be any security of titles, should not foster." (R. 39)

On page 44 of the Record, after discussing the so-called rule of property, he says:

"Now so much for this question as to whether or not this section, in the absence of discovery

of mineral, could be considered a mineral section. I think it could not."

"The other point upon which we rely is to my mind quite conclusive, and that is that in 1904 this Department classified this section as non-mineral."

Again, on page 46 of the Record, in discussing the importance of definitely settling the titles to land, he says:

"And I submit that in this case, where there is no fraud, no possible allegation of fraud, where the state five years after the classification of this land sold it in good faith to people who bought it in good faith, and who held it for ten years, and who have now invested some millions of dollars in the land, that the time has passed when the United States can assert its title thereto, and *that the United States is estopped by the judgment of this Department that this was non-mineral land in 1904*, and by its own regulations which defined it as non-mineral land in 1903."

The lower courts were clearly wrong in holding that the hearing of the Secretary of June 8th, 1921, was a hearing and determination on the merits. The charges which were pending in the land office at the time could only be determined in accordance with the established procedure of the Department and the law laid down by the court. The procedure was fixed in the order directing the hearing as prescribed in the Department circular of February, 1926, hereinbefore set out, which called for

an orderly hearing upon due notice given, and the opportunity to examine and cross examine witnesses under oath on disputed questions. The law applicable to the contest had been laid down by the Supreme Court in *United States v. Southern Pacific* (*supra*) wherein it was provided that the test of known mineral lands was not the actual production of mineral from the specific lands themselves, but rather "geological conditions, adjacent discoveries and other external conditions upon which prudent and experienced men in the oil mining regions are shown to be accustomed to act and make large expenditures."

The agreed statements of facts recites (R. 72):

> "It was the contention of the transferees from the state, with which contention Assistant Secretary Finney disagreed at the hearing, that it could serve no purpose to take evidence in the local land office to determine the question whether or not said section or the lands adjacent thereto showed structural and geological conditions indicative in 1903 of the existence of oil on said section under conditions justifying development therefor, for the reason that said question presented an immaterial question of fact and said question was not argued or discussed at the proceedings held on June 8th, 1921, or at any conferences prior thereto, between the representatives of the transferees and the Secretary of the Interior or the First Assistant Secretary of the Interior, except as shown in the brief (Exhibit 5) and in the transcript of proceedings (Exhibit 2) attached to answer."

Being well aware of these facts Mr. Sutro was seeking a way to avoid the delay and expense of such a hearing or trial on the charges pending. He believed that the course of dealing by the Department with this section amounted to a prior adjudication of the character of the land and this was the burden of his argument before Secretary Fall.

Secretary Fall did not adjudicate or purport to adjudicate this case on the merits on the charges then pending. His order of dismissal was a decision to drop the matter at that point. If he had intended to decide the case on the merits, it would have been a simple matter for him to have announced a finding of fact to that effect, and certainly the able and learned counsel, who was representing claimants, would have called this matter to his attention had he been seeking a decision on the merits.

The unavoidable conclusion to be gathered from the study of Mr. Sutro's brief filed with Secretary Fall at the time he was requesting the oral hearing and from his argument and the proceedings had at said hearing, is that Secretary Fall did not decide, nor was he asked to decide, the known mineral character of this land in 1903, and that Chief Justice McCoy was correct in his opinion rendered at the time he denied the application for the temporary injunction when he said, referring to Mr. Sutro's argument before Secretary Fall:

> "It would make this opinion too long to quote all the argument of counsel. It is enough to say that his argument before the Secretary of the Interior was substantially what it is here,

and therefore the inference which the court draws from the foregoing colloquy is that the Secretary ruled as a matter of law that title to the lands in question was finally determined to be in the State of California in January, 1903, when the plat of the survey was approved or in April, 1904, when the lands were relieved from suspension. The Secretary did not determine that the lands were not known in 1903 to be mineral. He said in substance that it was not worth while to waste time to inquire as to that, for even though the evidence taken on the contest might show that the lands were known to be mineral still he could not find so, as the inquiry as to that had been precluded by the department. If the action of Secretary Fall was final, then there never has been and never will be a determination of the contest directed by the department in 1914, notwithstanding that since 1900 the department has from time to time shown that it considered the question to be an open one." (R. 58)

VII.

THE SUTRO BRIEF AND ARGUMENT BEFORE SECRETARY FALL CONSTITUTE RESPONDENT'S ANSWER TO THE CHARGES THEN PENDING AND CONSTITUTE PART OF THE PLEADINGS IN THAT CASE. THIS COURT MAY EXAMINE THE PLEADINGS AND EVEN THE TESTIMONY TO ASCERTAIN WHAT THE ORDER OF DISMISSAL MEANT.

Mr. Sutro's brief and his argument before Secretary Fall constitute the answer of respondent to the charges then pending and are analogous to the pleadings in a case. The order from the Commissioner of the General Land Office of March 2, 1921 (R. 75), which directed the Register and Receiver to file charges against this land on the ground that the same was known to be mineral in character in 1903, directed said Register and Receiver to proceed in accordance with the Circular of February 26, 1916 (44 L. D. 572).

This Circular of February 26, 1916, is set forth in appellant's opening brief beginning on page 8, and requires the claimant (par. 5) to file a written denial under oath of the charges with an application for a hearing, or to submit a statement of facts rendering the charges immaterial. The contest then proceeds to a hearing upon the issues thus raised. In effect the written charges of the Department and the claimant's denial under oath or written statement of facts, constitutes the pleadings upon which the con-

test is heard. This Circular also recites that the proceedings will be governed by the Rules of Practice of the Department. Rule 13 of the Rules of Practice specifically provides that the party served with notice must within thirty days after personal service or twenty days after the fourth publication of notice "file with the Register and Receiver answer under oath specifically meeting and responding to the allegations of the contest * * *." It is therefore manifest that the procedure before the Department requires the claimant to file an answer or its equivalent, in the nature of a "written denial under oath of said charges with an application for a hearing," or a "statement of facts rendering the charges immaterial." These documents together with the charges constitute in effect the pleadings upon which this contest is heard.

The record in this case shows that the only document filed by respondent in the nature of an answer, or "a statement of facts rendering the charges immaterial," was the written brief by Mr. Sutro filed with Secretary Fall on May 26, 1921 (R. 79). This brief, together with the stenographer's transcript of Mr. Sutro's argument before the Secretary constitutes the only record in this case of the answer of the respondent to the charges then pending before the Department. The Government has always taken the position that it was absolutely necessary in determining what Secretary Fall decided to examine this brief and argument. It is elementary law that the pleadings in any case and where necessary, even

the testimony, may be examined to ascertain what a court decided.

One of the leading cases on this question is *Russell v. Place*, 94 U. S. 606, where Justice Fields in a careful opinion, which has been repeatedly approved, discussed the right to resort to extrinsic evidence to determine the scope and effect of a prior judgment and said:

> "It is undoubtedly settled law that a judgment of a court of competent jurisdiction, upon a question directly involved in one suit, is conclusive as to that question in another suit between the same parties. But to this operation of the judgment it must appear, either upon the face of the record or be shown by extrinsic evidence, that the precise question was raised and determined in the former suit. If there be any uncertainty on this head in the record—as, for example, if it appear that several distinct matters may have been litigated, upon one or more of which the judgment may have passed, without indicating which of them was thus litigated, and upon which the judgment was rendered—the whole subject-matter of the action will be at large, and open to a new contention, unless this uncertainty be removed by extrinsic evidence showing the precise point involved and determined. To apply the judgment, and give effect to the adjudication actually made, when the record leaves the matter in doubt, such evidence is admissible." (Page 608)

Rule affirmed in

DeSollar v. Hanscome, 158 U. S. 216, 221.

One of the earliest cases discussing the nature of the evidence to be considered in determining whether or not a former trial between the same parties amounted to *res adjudicata* is *Packet Company v. Sickles*, 5 Wall. 580. The court said:

> "As we understand the rule in respect to the conclusiveness of the verdict and judgment in a former trial between the same parties, when the judgment is used in pleading as a technical estoppel, or is relied on by way of evidence as conclusive, *per se*, it must appear, by the record of the prior suit, that the particular controversy sought to be concluded was necessarily tried and determined—that is, if the record of the former trial shows that the verdict could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties; and further, in cases where the record itself does not show that the matter was necessarily and directly found by the jury, evidence *aliunde* consistent with the record may be received to prove the fact; but, even where it appears from the extrinsic evidence that the matter was properly within the issue controverted in the former suit, if it be not shown that the verdict and judgment necessarily involved its consideration and determination, it will not be concluded." (p. 592)

On the following page (593) the court further said:

> "The evidence should be confined to the points

in controversy on the former trial, to the testimony given by the parties, and to the questions submitted to the jury for their consideration, and then the record furnishes the only proper proof of the verdict."

The above opinion is affirmed in *Fayerweather v. Ritch*, 195 U. S. 276, 306.

In *National Foundry v. Oconto Water Co.*, 183 U. S. 216, at page 234, the court said:

"It is elementary that if from a decree in a cause there be uncertainty as to what was really decided, resort may be had to the pleadings and to the opinion of the court in order to throw light upon the subject. *Baker v. Cummings*, 181 U. S. 117; *Last Chance Mining Co. v. Tyler Mining Co.*, 157 U. S. 683."

In *Hornbuckle v. Stafford*, 111 U. S. 389, at page 393, the court says:

"The decree having been put in evidence, it was clearly erroneous to exclude the pleadings upon which this decree was based. Even parol evidence is admissible when necessary to show what was tried in a suit, the record of which is offered in a subsequent action between the same parties. *Campbell v. Rankin*, 99 U. S. 261."

In the case of *Baker v. Cummings*, 181 U. S. 117, a general order of dismissal in a previous suit was pleaded as a bar to a later case between the same parties. The defendant alleged that the order of dismissal was not a final adjudication based on the merits but rather based upon the laches of the plaintiff. The Supreme Court, in order to determine this

question, examined in detail the opinion in the prior case.

Washington Gas Co. v. Dist. of Columbia, 161 U. S. 316, 329, the court said:

> "* * * The elementary rule is that for the purpose of ascertaining the subject-matter of a controversy, and fixing the scope of the thing adjudged, the entire record, including the testimony offered in the suit, may be examined. *Russell v. Place*, 94 U. S. 606, 609, 610; *Cromwell v. County of Sac*, 94 U. S. 351, 355, 356; *Lewis v. Ocean Navigation & Pier Co.*, 125 N. Y. 341, 348; *Littleton v. Richardson*, 34 N. H. 179, 188; Freeman on Judgments, §273, and authorities there cited."

VIII.

Section 36 Could Not be Alienated From the Government Except by an Adjudication of Its Non-Mineral Character by the Interior Department

The injunction granted by the lower Court in this case must be vacated and the judgment reversed unless it appears that the title to Section 36 has actually passed from the United States. Until the government is absolutely divested of this legal title the Interior Department has complete jurisdiction over this section and may prosecute the charges now pending against this section. The title to a so-called

school section remains in the United States until the Interior Department has determined that the same was not known mineral at the time of the approval of the survey. The only proceeding by which the federal government could be divested of this title was such a determination.

Secretary Fall on the hearing of June 8, 1921, did not decide the non-mineral character of this land as of the date of the approval of the survey. There were specific charges pending in the Department against this section to determine which, on the merits, required the taking of extensive testimony under the law laid down in the case of *United States v. Southern Pacific*, 251 U. S. 1. There was no provision either in the rules or practice of the Department whereby Secretary Fall could take such testimony (R. 73), and furthermore Mr. Sutro was urging him that it was not necessary to go into this controversy because the Department had theretofore adjudicated this question.

This brings us to the consideration of whether the Secretary could divest the United States of title to this land by ruling that there had been a determination of this question unless such a determination had actually been made. We do not believe that the Secretary had any such power. He was authorized under the law to determine the character of the land and had already filed charges and commenced proceedings looking towards the adjudication of this question. It was not within the powers of the Secretary of the Interior by any ruling or order, other than an actual determination of the mineral char-

acter of the land, to divest the United States of its title.

The order of dismissal of Secretary Fall could not possibly have any effect upon the rights of the parties herein. The only decision which could have affected these rights was an adjudication on the merits of the charges then pending against this section. The case was not before him for consideration upon the merits. If the mineral character had actually been determined by the Department beforehand, then the title was out of the government and the Interior Department had no jurisdiction to hold hearings thereon or to make rulings. The jurisdiction of the Department to determine this question is exhausted when once properly exercised. On the other hand if, in fact, there had been no prior determination by the Department of this question, Secretary Fall's ruling that there had been such a determination could not possibly make it so nor could it alienate the title of the federal government. *Louisiana v. Garfield*, 211 U. S. 70. Unless the title has actually passed from the United States the Department of the Interior still has jurisdiction. Even a course of dealing on the part of the government and the Land Department for fifty years on the theory that title had passed to the state will not estop the government from correcting the mistake and reasserting its claim. *Lee Wilson & Co. v. United States*, 245 U. S. 24. The order of dismissal could neither add to nor dimish the rights of the parties. It left the matter just where it stood before the hearing began.

In coming into court with this bill of complaint

respondent is entering the forum it should have entered in June 1921, instead of appearing before Secretary Fall for the oral hearing. Furthermore, as previously indicated, respondent is settling up in the complaint the identical defenses that were urged before Secretary Fall in June, 1921. Paragraph IV of the complaint alleges that the order of 1904 relieving Section 36 and the other lands from suspension was a determination that the said lands were non-mineral and that the title of California to said section was thereby finally determined and settled. Paragraph V alleges that under the operation of the Rules and Regulations of the Department of March 6th, 1903, and because no mineral had actually been discovered on the lands at that time, the title became vested in the State of California. Paragraph VIII of the complaint sets forth the equitable defenses and Paragraph X alleges that Secretary Fall's decision at the oral hearing on June 8, 1921, was a final adjudication and judgment of this question.

The order of dismissal of June, 1921, was not and could not have been a decision on the merits. The decision of the Court of Appeals of the District of Columbia was based upon obvious misreading of the record. The learned Associate Justice, who wrote the opinion, erroneously assumes that the parties in interest in this case expressly stipulated that taking of testimony in the local Land Office was not necessary on the disputed issues of fact, and he reiterates this statement three times in his opinion (R. 121, 122, 123).

As a matter of fact the record shows that this was the position taken at the hearing before Secretary Fall

by Mr. Sutro, but was disputed by Assistant Secretary Finney of the Interior Department, and because Mr. Sutro considered this question of fact immaterial, it was not discussed at the hearing on June 8, 1921, nor at any prior conferences between Mr. Sutro and Secretary Fall or Assistant Secretary Finney. The record recites, page 72:

> "It was the contention of the transferees from the State, *with which contention Assistant Secretary Finney disagreed at the hearing*, that it could serve no purpose to take evidence in the local land office to determine the question whether or not said section or the lands adjacent thereto showed structural and geological conditions indicative in 1903 of the existence of oil on said section under conditions justifying developments therefor for the reason that said questions presented an immaterial question of fact and said question was not argued or discussed at the proceedings held on June 8, 1921, or at any conferences prior thereto between the representatives of the transferees and the Secretary of the Interior or the First Assistant Secretary of the Interior, except as shown in the brief (Exhibit 5), and in the transcript of proceedings (Exhibit 2, attached to answer)."

IX.

If Secretary Fall Undertook a Decision On the Merits It Was a Void Act

The record shows that Assistant Secretary Finney took the position that the Navy having asked for a hearing as to the mineral character of the land at the date of the survey it was required under the rules of the Department, and the decision of the Supreme Court, that the geological indications, discoveries, and developments upon adjacent lands be taken into consideration to determine this question. The only way in which testimony could be taken on such an issue was before the local land office, as there is no provision either in the rules or the practice for taking testimony before the Secretary. Therefore, if Secretary Fall undertook to decide the case on the merits without giving the Government a chance to present its evidence or to be heard on its contention, he was exceeding and transcending his powers, and any order or ruling made by him under these conditions is absolutely void. It has been repeatedly determined that notice and an opportunity to be heard before being concluded by a judgment is inherent in the conception of due process of law and cannot constitutionally be dispensed with.

McDonald v. Mabee, 243 U. S. 90.

A judgment without adequate notice to or service upon the defendant is wholly void. A defendant must be accorded an opportunity to present his defense

according to the established mode governing the class to which his case belongs, and the court may not transcend in the extent or character of its judgment the law which is applicable to it.

Simon v. Southern Railway, 236 U. S. 115;
Webster v. Reid, 11 Howard 437.

Jurisdiction is held to be the right to hear and determine; not to determine without hearing. Where there can be no hearing or opportunity of being heard, there can be no exercise of jurisdiction, and where the court transcends the limits of its authority, its judgment is absolutely void.

Windsor v. McVeigh, 93 U. S. 274.

The conclusion is unescapable that the trial court erred in holding that the order of dismissal of Secretary Fall was a final judgment exhausting the powers of the department. This could be done only by a hearing and adjudication on the merits. Such an adjudication could not be made under a mode of procedure which prevented the government from putting in any evidence on the disputed questions of fact. If he intended to make such an adjudication, then he deprived the Government of the right to be heard and his decision was a void act. Such a ruling could have no binding force or effect upon the present Secretary of the Interior who would have full authority to review, reverse and vacate the ruling originally made.

Louisiana v. Garfield, 211 U. S. 70.

X.

This Suit Is One Against the United States

This case should be dismissed because it is in reality a suit against the United States which has not consented to be sued.

Since the title to this section has never been alienated from the Government, the United States is a necessary party in this suit. The petitioner is sued in his official capacity as Secretary of the Interior to restrain him from continuing with the discharge of one of the duties imposed by law upon him alone, to-wit, the determination of the mineral or non-mineral character of a section claimed under a school grant. He has no personal or individual interest in the matter but has asserted title to the lands in question in the name of the United States being authorized so to do by a joint resolution of Congress. This action is brought to remove such claims as an alleged cloud upon the respondent's title. This suit can not be maintained in the absence of the United States, its title can not be taken away or impaired "behind its back," nor can it be sued without its consent.

Louisiana v. Garfield, 211 U. S. 70;
Oregon v. Hitchcock, 202 U. S. 60;
Naganab v. Hitchcock, 202 U. S. 473;
New Mexico v. Lane, 243 U. S. 52.

The question whether the United States is a party to a controversy is not determined by the mere nom-

inal party on the record but by the effect of the judgment or decree which can be entered.

Minnesota v. Hitchcock, 185 U. S. 373, 387;
Louisiana v. McAdoo, 234 U. S. 627, 629;
Ex Parte State of New York, 256 U. S. 490, 500.

CONCLUSION

In conclusion we submit that the following points are established in this case: A careful examination of the history of this section shows that the Government since the year 1900 has regarded the question of the mineral character of this land as unsettled and open to determination by the Interior Department. In 1914 the Supreme Court of the United States in *The Southern Pacific* case (*supra*), definitely determined that other lands in this township, including the section immediately adjacent to Section 36, were known mineral in 1904. Charges were immediately filed in the Land Office calling for a determination of the mineral character of this section. Such charges were amended and pending and undisposed of when Mr. Sutro appeared before Secretary Fall in the spring of 1921 and asked to have the proposed contest dismissed because the matter had already been decided by the Department and the case closed. Secretary Fall was not asked to decide the case on the merits but to avoid and evade such a decision as it involved a procedure calling for a useless waste of time and expense. Sec-

retary Fall was persuaded by the argument of Mr. Sutro that it was not necessary to decide this case on the merits and accordingly dismissed the proceedings. He did not and could not adjudicate the merits without giving the Government a chance to present its case and be heard. If Secretary Fall thought the Government was estopped to assert claims to this land by reason of previous course of dealings or alleged equities asserted by appellee then his decision was absolutely void in point of law because the Government title to this land could only be divested by formal determination by the Department of its non-mineral character as of 1903 and such a determination has never been had.

We respectfully submit that the petitioner is wholly within his legal rights in proceeding with the hearing which the Supreme Court of the District of Columbia has enjoined. The courts should not interfere with the discharge by the Secretary of the Interior of his sworn duty and this case should be reversed.

Respectfully submitted,

W. CARR MORROW,

Attorney and Special Counsel for Petitioner.

BRIEF

FOR THE RESPONDENTS

IN

OPPOSITION

FILED

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1927

No. [redacted] 71

HUBERT WORK, Secretary of the Interior,
Petitioner,

vs.

STANDARD OIL COMPANY (a corporation),
Respondent.

On Petition for Writ of Certiorari to the Court of Appeals of the District of Columbia.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

OSCAR SUTRO,
Standard Oil Building, San Francisco, California,
McKENNEY & FLANNERY,
Hibbs Building, Washington, D. C.,
LEWIS TWISS,
[redacted] Washington, D.C.
Attorneys for Respondent.

[illegible] Printing Company, Inc., San Francisco

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1927

No. 771

HUBERT WORK, Secretary of the Interior,
Petitioner,
vs.
STANDARD OIL COMPANY (a corporation),
Respondent.

On Petition for Writ of Certiorari to the Court of Appeals of the District of Columbia.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

The decree sought to be reviewed enjoins the Secretary of the Interior from hearing an adverse proceeding in his department purporting to affect the title to a school section in Kern County, California. The Supreme Court of the District and the Court of Appeals decided that the adverse proceeding had been heard and decided by the petitioner's predecessor in office, that the previous decision was a final judgment which could not be set aside by the present Secretary, and that it could be attacked only by direct suit in equity brought for that purpose and

based upon sufficient grounds. Both courts further held that the title to the land had passed to the State of California, and was no longer a part of the public domain, so that the present Secretary had no jurisdiction over it.

THE FACTS.

The facts stated by the petitioner, except for a few errors and omissions, are correct. To these errors and omissions we respectfully beg to call attention.

1. While the official survey returned the section as mineral, the mineral return was based on field notes that recited that there were asphaltum exudations in the township which were said to be well known signs of oil. It is admitted in the case that the reference to asphaltum exudations was erroneous; that there was no mineral exposed in the township in 1903, and that the notation as to asphaltum outcroppings referred to exposures in an adjacent township (R. 40).

2. While it is true, as stated in the petition at page 2, that the State of California on March 7, 1903, filed in the local land office in California its offer to surrender this land as a base for an indemnity school land selection on the ground of its mineral character, it is also true that on March 6, 1903, the Department of the Interior at Washington adopted a regulation which prevented a state from surrendering a school section as mineral unless there was an actual discovery of mineral on the land (R. 4, 32 L. D. 39). This offer to surrender was made while the state must still have been in ignorance of this rule, and while the land was still under suspension from agricultural

entry, and while there was still nothing to detract from the force of the surveyors' mineral return. The offer of the state to surrender this section was withdrawn on August 15, 1905. This was after the land had been restored to agricultural entry on April 5, 1904 (R. 16-17), and presumably after the state knew of the rule of the Department that a school section could not be surrendered as mineral without proof of an actual discovery of mineral on the land.

3. When the land was restored to agricultural entry in April, 1904, the order of restoration recited that "no mineral has been discovered" on the land, and "no good reason exists for further suspension" (R. 11. R. 17).

4. In January, 1901, the state sold this section for $1.25 an acre. The purchaser, however, failed to pay the taxes, and in 1902, the section was sold to the state for delinquent taxes, penalties and costs, in the sum of $3.28 (R. 5). In August, 1908, the state again sold the land for $1.25 an acre. In November, 1909, respondent purchased the larger portion of this land from the grantees of the state (R. 5, 6).

5. No notice of the charges filed in January, 1914, was served upon the respondent or upon any one else until 1921 (R. 7, 38).

6. In December, 1916, the transferees from the State tendered this section to the Navy. This offer was rejected by the Navy, on the ground that it was not valuable for oil. At a hearing before the Public Lands Committee of the Senate in 1916, the chief geologists of the Navy testified that this land "was not commercial oil land at all" (R. 39).

7. In 1918, the war demands caused a great shortage of oil and in that year respondent drilled upon this section and discovered oil. This was the first discovery of oil on the section. The first discovery of oil in the entire township or in the Elk Hills structure was in 1911. After the discovery of oil in 1918, the development of the section proceeded rapidly, and a great many wells were drilled thereon (R. 39, 66, 67).

8. All the foregoing matters were shown and stipulated at the hearing before the previous Secretary.

9. After the discovery of oil and the further development of the section and in February, 1921, the Secretary of the Navy and the Secretary of the Interior requested the Department of Justice to take action to protect the interests of the United States and of the Navy in this section. The Department of Justice concluded: (1) That the determination as to the known mineral character of the land was exclusively a matter for the Department of the Interior, and (2) that on account of the possible loss by drainage from the adjoining section, an injunction pending such determination was inadvisable, provided there would be no further development "pending a speedy determination by the Department of the Interior of the question of title" (R. 68).

10. Assurances were "given by the Interior Department that there would be an early hearing and determination of the character of the land" (R. 69), and on May 16, 1921, an agreement was entered into between the transferees and representatives of the Department of Justice and of the Department of the Navy that no action would be taken until a determination by the Department of the

Interior of the known mineral character of the land (R. 69), and upon the further condition that the transferees from the State

> "would immediately endeavor to secure from the Department of the Interior an early hearing and determination with respect to the known mineral character of said Section 36 at the date of the approval of the survey thereof and with respect to the title to said Section 36" (R. 69).

11. Request was made to the Secretary of the Interior for a speedy determination (R. 70), and the request was granted. Written notice was given by the Secretary to the Attorney General, the Secretary of the Navy and to the transferees from the State of a hearing to be held on June 8, 1921, for the purpose of determining "whether or not said section passed to the State of California under its school grant" (R. 89).

12. On page 7 of the petition, in referring to the hearing before the Secretary, it is asserted that no opportunity was offered for the presentation of either testimony or argument on behalf of the Government. The record shows that in addition to the Secretary himself there were five representatives of the Government present. All of these representatives of the Government were familiar with all the facts and four were attorneys especially skilled in land law (R. 70, 71, 72). Two of these attorneys participated in the discussion, and one, Assistant Secretary Finney, urged upon the Secretary that evidence as to geological conditions should be received (R. 47, 48). At this hearing Mr. Sutro in behalf of the claimants to the land, made an oral statement of facts and argued from these facts that whatever the rule might be with regard to railroad grants,

so far as school sections were concerned evidence as to geological conditions was immaterial in view of the rule of the department that a school section could not be surrendered as mineral unless there was an actual discovery of mineral on the land (R. 41, 42, 43). The Secretary's remarks indicate that he agreed with Mr. Sutro that evidence as to geological conditions would be immaterial (R. 46). At the conclusion of the statement, he asked the representatives of the Government if the facts stated by Mr. Sutro were admitted, and upon receiving the reply that these facts were substantially correct he ordered the contest dismissed (R. 49, 72).

13. After these proceedings the representatives of the Department of Justice, present at the hearing, reported to the Assistant Attorney General that the Secretary of the Interior had decided that the lands in said Section 36 were not known mineral at the date of the grant to California, and thereupon the Department of Justice took no further steps in the matter (R. 72-73).

14. The procedure followed in this hearing was in accordance with the practice of the office of the Secretary of the Interior (R. 73).

JUDGMENT OF THE SECRETARY DISMISSING THE CONTEST.

15. On the following day the Secretary of the Interior, through the First Assistant Secretary, rendered his formal and written judgment of dismissal, which recited that "after consideration of the law and facts involved", the Secretary had on the previous day directed that the proceeding be dismissed (R. 20). No petition for rehearing

was ever filed, and the judgment remained unchallenged until May 8, 1925, when the present Secretary, by a written order, attempted to set aside the judgment so rendered by his predecessor, and to again hear and determine the same contest which the former Secretary had heard and determined (R. 21, 24).

ARGUMENT.

I.

THE WRITTEN JUDGMENT OF THE SECRETARY OF JUNE 9, 1921, WAS A FORMAL DECISION OR JUDGMENT.

Ary v. Iddings, 12 L. D. 252;
West v. Hitchcock, 205 U. S. 80;
Coder v. Lotridge, 12 L. D. 643;
John H. Reed, 6 L. D. 563;
Murray v. Polglase, 43 Pac. 505;
Anderson v. Northern Pacific, 7 L. D. 163;
Dahlstrom v. St. Paul, 12 L. D. 59.

II.

THE DECISIONS OF THE SECRETARY ARE JUDICIAL IN CHARACTER.

United States v. Schurz, 102 U. S. 378;
Wisconsin Central Railroad Co. v. Price County, 133 U. S. 496;
Wyoming v. United States, 255 U. S. 489;
Steel v. Smelting Co., 106 U. S. 447;
Payne v. New Mexico, 255 U. S. 367.

III.

THE JUDGMENT OF JUNE 9, 1921, WAS A JUDGMENT ON THE MERITS.

This judgment recites on its face that it was rendered after a "consideration of the law and the facts", thus showing affirmatively on its face that it was a judgment on the merits. However, if the judgment had contained no such recital, the judgment of dismissal would be conclusively presumed to be a judgment on the merits.

Durant v. Essex, 7 Wall. 107;

Lyon v. Perin, 125 U. S. 698;

Armour & Co. v. Ft. Morgan, 270 U. S. 253;

Scott v. First National Bank of Morris, 285 Fed. 832;

Hickey v. Johnson, 9 Fed. (2nd) 498.

Counsel contend that the Secretary rendered the judgment because he was of opinion that the Government was estopped from claiming that the land was known mineral land by reason of the rule of the department with regard to school sections, and by reason of the restoration to agricultural entry in 1904. From this he argues that the judgment was not rendered on the merits, and not being rendered on the merits, the present Secretary can set it aside. Every remark made by the Secretary indicates that his decision was not based on an estoppel (R. 41, 43, 45, 46-49). But if the judgment were based on an estoppel it would still be a judgment on the merits.

Black on Judgments, Sec. 694;

Burk v. Spafford, 35 Me. 526.

IV.

THE JUDGMENT CONCLUSIVELY IMPLIES A FINDING THAT THE LAND WAS NOT KNOWN MINERAL.

Burke v. Southern Pacific, 234 U. S. 669 (p. 691 of opinion);

Smelting Company v. Kemp, 104 U. S. 636;

Buena Vista Petroleum Co. v. Tulare, 67 Fed. 226.

See also:

Fauntleroy v. Lum, 210 U. S. 230;

American Express v. Mullins, 212 U. S. 311.

V.

THE PROCEDURE ADOPTED BY THE SECRETARY OF THE INTERIOR WAS WITHIN HIS JURISDICTION.

The Secretary of the Interior has complete authority over the public lands.

Revised Statutes, Sec. 441;

Johanson v. Washington, 190 U. S. 179.

The procedure adopted by the Secretary of the Interior was in accordance with the practice of the Department (Agreed Statement, R. 73) and provided for by the rules of practice of the Department (Rule 85, Rule 86, R. 90, 91).

Representatives of the Departments of Justice and Navy and the transferees were agreed that the case presented an exigency calling for an immediate decision (R. 67, 68, 69), and the exigency was stated to the Secretary at the oral hearing (R. 46). It was for the Secretary to determine whether the exigency of the case was sufficient

to justify the procedure followed. The Secretary can decide any matter pending in his Department.

Knight v. United States Land Asso., 142 U. S. 161;
Hawley v. Diller, 178 U. S. 476;
Lake Superior Ship Canal Co. v. Patterson, 30 L. D. 160;
Harvey M. La Follette, 26 L. D. 453.

VI.

THE JUDGMENT OF THE SECRETARY WAS A FINAL JUDGMENT THAT TITLE HAD PASSED TO THE STATE AND WAS THE EQUIVALENT OF A PATENT.

Shaw v. Kellogg, 170 U. S. 312;
Lane v. Watts, 234 U. S. 525;
Michigan Land & Lumber Co. v. Rust, 168 U. S. 589;
Chandler v. Calumet & Hecla Mining Co., 149 U. S. 79;
Noble v. Union River Logging R. R., 147 U. S. 165;
Del Pozo v. Wilson Cypress Co., 269 U. S. 82.

In each case the question as to whether or not the title has become vested is: "Is there any further action to be taken?" And it has been uniformly held that if there is no further action for the Department to take, the final action, whatever it may be, operates as a patent and either passes the title or confirms it.

United States v. Schurz, 102 U. S. 378;
Bockfinger v. Foster, 190 U. S. 116;
Ernest B. Gates, 41 L. D. 384.

In the case of *United States v. Schurz*, 102 U. S. 378, the court said:

> "It is equally clear that this period is at the latest, precisely when the last act in the series, essential to the transfer of title has been performed. Whenever this takes place, the land has ceased to be the land of the government, or to speak in technical language, the legal title has passed from the government and the power of these officers to deal with it has also passed away."

So, in this case, there was nothing further for the Interior Department to do. There was no provision for the issuance of a patent. There was no provision for any approval of any list. In fact, there was no provision for the doing of any further act in connection with the title. The grant was a grant *in praesenti*. The title passed to the State, unless the land was known mineral land at the date of the approval of the survey. The United States filed a formal proceeding to have it determined that the title to the State had not passed. That proceeding came on for hearing before the tribunal having jurisdiction to hear it. The hearing was held and judgment was rendered that the title had passed from the United States and that the State's title had vested. There was no other act that the Department could take; there was no further paper for it to sign; there was no entry to be made; there was nothing further of any kind or character to be done. The last act in the transmission of the title to the State had been performed, and under the authorities cited, the title had passed to the State.

VII.

THE JUDGMENT OF THE SECRETARY IS IMPERVIOUS AGAINST COLLATERAL ATTACK ON ANY GROUND EXCEPT THAT IT IS ABSOLUTELY VOID.

Although the judgment recited that it was rendered after consideration of the law and facts involved, and although the Secretary had before him the records of the Department and facts which were agreed to be correct and physical evidence with respect to the land, petitioner claims that the transcript of the proceedings before the Secretary should be inspected in order to determine whether the judgment rendered was rendered on the merits.

If the transcript of the proceedings be examined, it shows conclusively that the Secretary did intend to and did render a judgment on the merits. Both the transferees from the State and the representatives of the Government were seeking a judgment on the merits (R. 69), and the notice of the hearing which the Secretary sent out, stated that the hearing was to determine whether or not the section had passed to the State of California under its school grant (R. 89).

At the hearing the principal discussion was whether or not under the admitted facts the land was known mineral land, and every remark the Secretary made indicated that it was that question that he was considering (R. 43, 49).

But as a matter of fact, the transcript cannot be inspected to impeach the judgment.

Franklin County v. German Savings Bank, 142 U. S. 93;

Freeman on Judgments, Secs. 304, 305.

And even the remarks of a Judge or his opinion cannot be looked to to destroy the effect of a judgment.

Baxter v. Buchholz-Hill Co., 227 U. S. 637;
Martin v. Evans, 85 Md. 8; 36 Atl. 258.

And this principle applies to judgments of the Secretary of the Interior.

Smelting Co. v. Kemp, 104 U. S. 636;
West v. Hitchcock, 205 U. S. 80;
De Cambra v. Rogers, 189 U. S. 119.

It is argued that the judgment of the Secretary was erroneous, and that his decision should not have been rendered on the basis of the rules of the Department to the effect that in the case of school land the title passes, in the absence of a showing of mineral on the land. But the judgment is not subject to collateral attack on account of such error, if error it was.

Franklin County v. German Savings Bank, 142 U. S. 93;
Smelting Co. v. Kemp, 104 U. S. 636;
United States v. Schurz, 102 U. S. 378;
Noble v. Union River Logging R. R., 147 U. S. 165;
Burke v. Southern Pacific, 234 U. S. 669.

The only method of attacking such a judgment is by a direct judicial proceeding to set the judgment aside.

Knight v. United States Land Asso., 142 U. S. 161;
Noble v. Union River Logging R. R., 147 U. S. 165;
Burke v. Southern Pacific, 234 U. S. 669.

In this latter case, this court said, with reference to a patent issued without any investigation whatever as to the character of the land:

"A patent issued in such circumstances is irregularly issued, undoubtedly so, but as it is the act of a legally constituted tribunal and is done within its jurisdiction, it is not void and therefore passes the title (Noble v. Union River Logging R. R., 147 U. S. 165, 174, 175), subject to the right of the government to attack the patent by a direct suit for its annulment if the land was known to be mineral when the patent issued."

VIII.

THE PRESENT SECRETARY CANNOT SET ASIDE THE ORDER OF HIS PREDECESSOR AND CAN BE ENJOINED FROM ACTING BECAUSE HE HAS NO JURISDICTION OVER THE LAND. THIS ACTION IS NOT AGAINST THE UNITED STATES BUT AGAINST THE SECRETARY, TO PREVENT HIM FROM ACTING WHERE HE HAD NO JURISDICTION.

Moore v. Robbins, 96 U. S. 530;

Lane v. Watts, 234 U. S. 525;

Noble v. Union River Logging R. R., 147 U. S. 165;

United States v. Schurz, 102 U. S. 378.

IX.

THE VARIOUS WITHDRAWALS CANNOT AFFECT THE RIGHTS OF THE TRANSFEREES FROM THE STATE.

All the withdrawals shown by the record were made long after the State's rights became vested and even after the State had sold the land. The withdrawals, therefore, are of no importance in this case.

Payne v. Central Pacific Ry., 255 U. S. 228.

X.

STATEMENTS OF THE COURT OF APPEALS RELIED UPON BY PETITIONER.

The main argument of the petitioner is that the Court of Appeals erred in stating that it was agreed by the parties that it was not necessary to go into the question of geological evidence. We submit that this presents no question of law and no one of the recognized grounds for the granting of a writ of certiorari. But, as a matter of fact, the opinion of the Court of Appeals points out that Mr. Finney, First Assistant Secretary of the Interior, did not join in this agreement. (R. 121.)

The substance of the matter is that before the hearing all of the representatives of the Departments understood the contention of the transferees from the State in this respect. (R. 72.) Assistant Attorney General Riter wrote a letter to a Special Assistant Attorney General in which he called this Mr. Sutro's main contention. (R. 78.) They all understood that if this contention were correct, the matter could be determined without the taking of evidence in the local Land Office in California and the delay of a long hearing in the local Land Office and of the ensuing steps; they all wanted a speedy determination. (R. 68, 69.) They all understood that such determination would be sought by the transferees from the State from the Secretary of the Interior, and they all responded to the notice of the hearing which was sent out by the Secretary and participated in the hearing without protest. (R. 69, 37.)

The statement of the Court of Appeals to which petitioner takes exception is in substance correct. An inspection of that opinion, however, discloses that the Court of

Appeals supported the jurisdiction of the Secretary of the Interior not by the agreement referred to, but upon the authority of the decision of this court in *Knight v. United States Land Association*, 142 U. S. 161, from which the Court of Appeals quoted at length, and upon which the Court of Appeals based its approval of the decision of the trial court that the Secretary of the Interior had authority and jurisdiction to proceed as he did.

It is obvious that under the decision in *Knight v. United States Land Association* the decree sustaining the jurisdiction of the previous Secretary over the proceedings is correct, and the discussion of whether or not the Court of Appeals correctly or incorrectly read the record as to the agreement of the parties in respect to what the Secretary could do presents a false issue.

The Secretary having jurisdiction to decide the case, decided it. His judgment cannot be upset because the attorney presenting the case may have made a faulty argument or even if the Secretary himself had erroneously excluded certain evidence, or had come to a wrong decision. The only method of setting the judgment aside is by a direct attack against the judgment itself. Up to the present time, the United States has not seen fit to make such attack. The proper law officers of the Government have taken no action to set it aside. This petitioner, on his own motion, attempts to set aside the judgment of his predecessor and to again hear and to again determine the very case which his predecessor has already heard and determined. This he cannot do. No suggestion of fraud is made in this case, but petitioner's contention is based chiefly on the alleged erroneous conclusion of

the Court of Appeals as to a matter of fact with respect to the agreement of the parties as to what the Secretary of the Interior should hear and determine. A judgment of a Court of Appeals

> "which turns on a matter of fact of no general importance depending on an appreciation of circumstances admitting of different interpretations will not be reviewed by certiorari".

Federal Trade Commission v. American Tobacco Co., 274 U. S. 543;

Layne, etc. Co. v. Western Well Works, 261 U. S. 387, 393;

Lau Ow Bew, Petitioner, 141 U. S. 583;

Southern Power Co. v. North Carolina Public Service Co., 263 U. S. 508;

In re Woods, 143 U. S. 202;

Boldt v. Pennsylvania Ry. Co., 245 U. S. 440.

We respectfully submit that the petition should be denied.

OSCAR SUTRO,
MCKENNEY & FLANNERY,
LOUIS TITUS,
Attorneys for Respondent.

RESPONDENT'S

BRIEF

Office Supreme Court
FILED
OCT 15 19
CHARLES ELMORE

IN THE

Supreme Court of the United States

No. 71.

ROY O. WEST, Secretary of the Interior, *Petitioner*,

vs.

STANDARD OIL COMPANY, (a corporation), *Respondent*.

BRIEF FOR RESPONDENT.

OSCAR SUTRO,
McKENNEY & FLANNERY,
LOUIS TITUS,
Attorneys for Respondent.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

No. 71.

ROY O. WEST, Secretary of the Interior, *Petitioner*,

vs.

STANDARD OIL COMPANY, (a corporation), *Respondent*.

BRIEF FOR RESPONDENT.

The above-entitled case is before this court on a writ of certiorari, to review a judgment of the Court of Appeals of the District of Columbia, affirming a judgment of the Supreme Court of the District, enjoining the petitioner, as Secretary of the Interior, from proceeding with a contest in his department purporting to affect the title to a certain Section 36, a school section, in Kern County, California.

OPINIONS OF THE COURTS BELOW.

The official report of the opinion of the Court of Appeals is found in 57 Appeal Cases, D. C., 329; also in 23 Fed. (2d) 750. The opinion is also set forth in

NOTE:—Italics ours wherever used in this brief.

the record, page 119. The opinion of the Supreme Court of the District is found in the record, page 95.

STATEMENT OF THE CASE.

On March 3, 1853, Congress granted to the State of California the sixteenth and thirty-sixth sections in each township for school purposes (10 Stats. L. 244). The grant did not include land known to be mineral at the date of the approval of the survey in cases where the survey was made after the date of the grant. *Mining Co. v. Consolidated Mining Co.*, 102 U. S. 167; *Wyoming v. United States*, 255 U. S. 489, see p. 500.

The portion of the township containing the section 36 in controversy, was surveyed in 1901 and 1902, and the survey was approved by the Department on January 26, 1903 (R. 66). The title to this section, therefore, vested in the state of California on January 26, 1903, unless on that date the land was known mineral land.

In 1914 a contest or adverse proceeding concerning this section was instituted in the Department of the Interior on behalf of the United States against the State of California and its transferees (R. 7). The contest as amended charged that the title of the State and its transferees to Section 36 was invalid because the land was known mineral land at the date of the approval of the survey (R. 77). The contest lay dormant until 1921, when it was revived and a hearing had thereon on June 8th of that year. At the close of the hearing the then Secretary of the Interior orally ordered the contest dismissed. The next day, on June 9th, the formal written judgment of the Depart-

ment was rendered dismissing the contest and closing the case on the records (R. 20).

Approximately four years later, on May 8, 1925, a succeeding Secretary attempted to reverse and set aside this formal judgment of his predecessor and thereafter attempted to proceed with a hearing on the charges contained in the adverse proceeding (R. 21, 25). Thereupon the complaint in this section was filed, praying for an injunction enjoining the Secretary from continuing with the proceedings directed by him. Upon the final hearing of the case upon the merits, the Supreme Court of the District of Columbia entered a judgment granting the injunction as prayed upon the ground that the decision by the former Secretary was a judgment on the merits that the title to the land had vested in the state, that the present Secretary had no jurisdiction over the land and no authority to set aside the judgment of his predecessor, and that any attempt on his part to hold hearings or make orders with reference to the land could have no effect except to cloud the title, against which clouding of title an injunction should properly issue. That judgment of the Supreme Court was affirmed by the Court of Appeals of the District, and it is this judgment of the Court of Appeals, review of which is now to be had.

THE QUESTIONS INVOLVED.

The case involves the question whether the present Secretary of the Interior has jurisdiction to again try and to again decide the same adverse proceedings affecting this section, which a former Secretary has already tried and has already decided. The petitioner challenges the decision of the former Secretary on two grounds: First, that it was not on the merits; second,

that if it were on the merits, nevertheless it is void because the Secretary erroneously refused to consider certain evidence as to geological conditions.

There are thus two questions involved:

> (1) Was the judgment of the former Secretary a judgment on the merits?
>
> (2) If it was a judgment on the merits, is it void because the Secretary failed to consider certain evidence alleged to have been material?

At the outset, it should be noted that this is not an action to set aside the judgment of the former Secretary upon the ground that such judgment was procured by fraud or by mistake or upon any other ground. The United States has brought no such action. But this petitioner, the present Secretary, attempts on his own authority to set aside or to ignore the judgment of his predecessor and again to hear and decide the very contest which has once been heard and decided. This we submit he cannot do.

Counsel for petitioner apparently concede that if the judgment of the former Secretary were on the merits and not void by reason of the alleged error in respect to the reception of evidence, then the judgment of the court below should be affirmed.

FACTS.

Respondent deems the statement of facts set out in petitioner's brief entirely inadequate for a proper understanding of the questions involved. We, therefore, set out the essential facts involved in the case. *The case is before the court on an agreed statement of facts* (R. 66-75).

Survey and Approval of Plat.

That portion of the township containing Section 36 was surveyed in 1901 and 1902. The plat of survey was approved by the Commissioner of the General Land Office, January 26, 1903 (R. 66). While the official survey returned the land as mineral (R. 66), the mineral return was based on field notes which recited that there were extensive asphaltum exudations in the township (R. 40). This recital was an error, as is shown by the agreed statement of facts to the effect that no mineral was exposed in this township or oil discovered therein prior to 1910 (R. 66). The erroneous recital appears to have been based on a confusion of this township with another township, which did contain well known asphaltum exudations (R. 40).

Suspension From and Restoration to Agricultural Entry.

In 1900 this township, together with forty others, was suspended from agricultural entry pending examination as to the mineral or non-mineral character thereof (R. 11). On April 5, 1904, the Commissioner of the Land Office relieved the entire township from suspension and restored the same to agricultural entry on the ground that

> "no mineral has been discovered" and "no good reason exists for further suspension" (R. 17).

State's Offer to Surrender Section and Withdrawal of That Offer.

On March 7, 1903, the State of California applied for a lieu land section in another part of the State and tendered the section in controversy as a mineral

base. On August 15, 1905, the State withdrew the tender and offered another section 36 as a base for the lieu section. It will be observed that the offer to surrender the section in question was made at a time when the land was withdrawn from agricultural entry and while there was nothing to detract from the force of the surveyor's mineral return, and that the withdrawal of the offer was made after the restoration of the land to agricultural entry by an order of the Commissioner reciting that no mineral had been discovered thereon and after the Department had promulgated the rule that a school section could not be used as a base for lieu land because of its alleged mineral character in the absence of proof of the exposure of mineral on the land. (R. 32.)

Regulation of the Department that School Sections Could Not Be Surrendered as Mineral Without Actual Discovery of Mineral on the Land.

On March 6, 1903, the Department published rules and regulations (32 L. D. 39) (subsequently re-promulgated on the point here at issue, 34 L. D. 365,369) which provided that a school section could not be used as a mineral base for lieu land and surrendered for that purpose "whether returned by the Surveyor General as mineral or otherwise" without proof that the land "was chiefly valuable for mineral" and without proof "of the kind of mineral discovered on the land and the extent thereof, when and by whom the discoveries were made" etc. etc. and that without such proof a lieu selection "would not be permitted." (R. 4.)

That proof could not have been made in 1903. The agreed statement of facts shows that prior to 1919 there was no discovery of mineral on the land and

prior to 1910 none in the entire township. In 1903 no mineral was known to exist within a radius of many miles of the section.

Obviously this regulation issued in Washington on March 6, 1903, could not have been known in California on March 7, 1903, when the tender of this section was made. But the regulation undoubtedly was known in 1905 when the tender of the section was withdrawn and coupled with the Commissioner's restoration of the land to agricultural entry and his finding that there was no mineral in the township undoubtedly caused the State to abandon the attempt to use the section as a mineral base.

Sales by the State.

On January 3, 1901, Alice J. Miller contracted to purchase this land from the State of California at $1.25 per acre, and made her initial payment of $160. She failed to make further payments and also failed in the payment of interest and taxes. On July 2, 1902, her interest in the section was sold to the State for delinquent taxes, penalties and costs in the sum of $3.28 (R. 5, 74). On August 25, 1908, George Hay and M. W. Buffington redeemed the land from the previous tax sale and contracted to purchase the entire section at $1.25 per acre, and in due course the State of California issued its patent for this land. In November, 1909, a portion of the section was sold to the respondent by the purchaser from the State at $22 per acre. At approximately the same time another portion was sold to one F. J. Carman for $20 per acre (R. 5, 6, 74).

Withdrawals and Establishment of Naval Reserve.

Beginning September 18, 1908, there were various recommendations for and subsequently withdrawals of this land by the Department. Finally by executive order dated September 2, 1912, Naval Reserve No. 1, including this section, was established by President Taft, "subject to valid existing rights." (R. 91, 95.)

Adverse Proceedings Begun.

On January 14, 1914, adverse proceedings were initiated in the General Land Office on behalf of the United States, contesting the title of the State of California and its transferees to this section. This contest as amended charged that the land was known to be mineral at the date of the approval of the survey, (R. 35, 77). No notice of the contest was given to anyone (R. 38), and apparently no attention was ever paid to it until 1921 except that in 1917 the attention of the Commissioner of the General Land Office was drawn to its pendency (R. 7). No one outside of the Land Office appears to have known anything about it (R. 38).

Section Offered to Navy in 1916 and Rejected As Not Oil Land.

In December 1916 this section was tendered to the Navy Department. The land was then in the same barren condition in which it had been from the time of the grant in 1853. The tender was rejected by the Navy Department and the land condemned as worthless for mineral purposes (R. 81, 39). The matter was discussed in hearings before the Senate Committee on Public Lands in 1916 and various officials of the Navy

testified that the offer of the land was declined because of its uselessness for mineral purposes, the Chief Geologist of the Navy testifying that "it was not commercial oil land at all." It was urged before the Secretary in 1921 that school land not known to be mineral in 1916 was surely not known to be mineral in 1903 (R. 39, 80, 81).

Oil Discovered on Section in 1919.

In 1918, a severe shortage in crude oil, owing to war demands, lead to an intensive search for oil, (R. 39). In that year plaintiff commenced drilling on this section and in January, 1919, discovered oil (R. 6). In May, 1919, plaintiff paid $100,000 for a drilling contract on shares for that portion of the land belonging to F. J. Carman (R. 6, 73). Thereafter the development of the section proceeded rapidly, many wells being drilled and large quantities of oil produced (R. 6, 7).

Assessment of the Land by State.

The land had been assessed by the state prior to 1912 at from $1 to $2 an acre; from 1912-1918 at $25 an acre; in 1919 at $250 an acre. The state assessed the land in 1920 at $1500 an acre and from 1921 to 1924 at an average valuation in excess of $4,000 an acre. Prior to 1926, $333,372.64 was paid to the state in taxes on this section, of which sum plaintiff and its predecessors in interest paid $328,003.39 between the years 1910 and 1925 (R. 73).

Secretaries of the Navy and Interior Request Attorney General to Take Action Protecting Government's Interest.

On February 28, 1921, after large quantities of oil had been developed on the section, the Secretary of the Navy requested the Department of Justice to take action to protect the interests of the United States and of the Navy in said section. On March 2, 1921, the Secretary of the Interior requested the Attorney General to take action to protect the Government's interest (R. 67).

Department of Justice Defers Proceedings Pending Determination of Title by Interior Department.

The Department of Justice concluded that it could do nothing except to institute proceedings for the appointment of a receiver and for an injunction against further operation pending the determination of title by the Department of the Interior (R. 68), but that such proceedings were inadvisable if the operators would agree to suspend further development,

> "pending the speedy determination by the Department of the Interior of the question of title" (R. 68).

Commander Stuart of the Navy, in charge of Naval Reserves, agreed with this conclusion,

> "in view of the fact that assurances had been given by the Interior Department that there would be an early hearing to determine the character of the lands" (R. 69).

Agreement Reached Between Claimants to Land and Departments of Justice and Navy.

On May 16, 1921, an agreement was entered into between the representatives of the transferees of the State and representatives of the Departments of Justice and of the Navy, whereby the transferees agreed to refrain from further drilling said land,

> "upon the understanding that a speedy determination would be had in the Department of the Interior with respect to the title to said Section 36" (R. 69).

It was also agreed that the Department of Justice would take no action,

> "until a determination by the Department of the Interior as to the known mineral character of said lands" (R. 69).

It was further agreed that the transferees from the State of California,

> "would immediately endeavor to secure from the Department of the Interior an early hearing and determination with respect to the known mineral character of the said Section 36 at the date of the approval of the survey thereof and with respect to the title to said Section 36" (R. 69).

Transferees Request Department of Interior to Determine Title to Land.

In pursuance of the foregoing agreement, the transferees presented to the Secretary of the Interior "their request for a determination with respect to the title to said section." The matter was argued before the

Secretary of the Interior and the First Assistant Secretary on May 25, 1921, (R. 70) and a brief accompanied by a map showing the state of development of the surrounding territory was filed with the Secretary on May 26th (R. 70).

Secretary Gives Notice to All Departments Interested of Hearing to Determine Title.

On May 28, 1921, the Secretary of the Interior gave written notice to the Attorney General and to the Secretary of the Navy that a hearing would be held on June 8th to determine whether or not said section passed to the State of California under its school grant. The notice to each Department was substantially the same. The one sent to the Attorney General by the administrative assistant to the Secretary notified the Attorney General that,

> "owners of land in section 36, naval reserve No. 1, California, have asked to be heard orally in the matter of proposed proceeding by the Government *to determine whether or not said section passed to the state of California under its school grant*. Secretary Fall has agreed to hear them at two p. m., Wednesday, June 8, 1921, and will be glad to have representatives of the Department of Justice present at that time if you so desire." (R. 89.)

Hearing Was Held Pursuant to Notice and All Departments Represented.

The hearing was held in pursuance of the notice and there were present the Secretary of the Interior; the First Assistant Secretary of the Interior; C. D. Hamel, an attorney appearing for the United States

Land Office; D .D. Caldwell, Special Assistant Attorney General; Commander H. A. Stuart of the Navy, and Harry L. Underwood, special assistant to the Attorney General. All of the transferees from the state were represented at the hearing (R. 71).

Government Representatives Thoroughly Informed On All Questions Involved.

The agreed statement of facts shows that all of the representatives of the government were fully and specially informed with respect to the subject-matter under discussion and were thoroughly familiar with all questions of fact and of law involved in a determination of the title to Section 36, and were fully familiar with the contentions of the Land Office and of the transferees with respect to said adverse proceedings. They were also familiar with the records of the Department and the practice in such proceedings (R. 70, 71).

All the matters presented at the hearing and in the brief, which had previously been filed with the Secretary of the Interior on May 26th, were known to the representatives of the Department of Justice and the Navy Department and of the Land Office and to the Secretary of the Interior and to the First Assistant Secretary of the Interior prior to the date of said hearing (R. 72).

Statement of Facts and Argument Made by Mr. Sutro, Representing Transferees.

At the hearing, Mr. Sutro, representative of the transferees from the State of California, made a statement of facts and an argument. These presented no material fact not disclosed by the records of the De-

partment, except the date when the Standard Oil Company bought the section from the State of California or its transferees (R. 72).

Facts Stated at Hearing Admitted to be Correct.

At the conclusion of the hearing the Secretary asked Mr. Finney and the other representatives of the government whether the facts stated by Mr. Sutro were admitted, and received the reply that the facts stated were substantially correct (R. 72).

Decision of Secretary.

Thereupon the Secretary orally directed that the contest be dismissed. On the following day the formal decision of the Secretary was rendered in writing. The decision was written by the First Assistant Secretary of the Interior upon the direction of the Secretary of the Interior (R. 72).

That decision is as follows:

> "Department of the Interior,
> Washington, June 9, 1921.
> Received Jun. 9, 1921, G. L. O.
> Address only the Secretary of the Interior.
> The Commissioner of the General Land Office.
>
> Dear Mr. Commissioner: In 1914 proceedings were directed by your office against the state of California and its transferees as to secs. 16 and 36, T. 30 S., R. 23 E., M. D. M. No further action appears to have been taken in the matter until the latter part of 1920, when, it having been called to the attention of the Commissioner of the General Land Office, direction was given that the proceedings be revived and appropriate action taken.
>
> The transferees of the State of California, representatives of the Department of Justice and of

the Navy Department appeared before Secretary Fall on June 8, 1921, and presented the matter orally, whereupon, *after consideration of the law and facts involved*, the Secretary verbally directed that the proceedings be dismissed. You are therefore authorized and directed to dismiss the proceedings against the State of California and its transferees in re said secs. 16 and 36. Notify all parties in interest of the dismissal and close the case upon your records.

By direction of the Secretary.

Respectfully,

E. C. FINNEY,
First Assistant Secretary" (R. 20).

The decision was promulgated by the Commissioner of the General Land Office on June 13, 1921 (R. 72, 20).

Understanding of Effect of Decision by Representatives of Department of Justice.

After the hearing, Messrs. Caldwell, Underwood and Hamel made their report to Assistant Attorney General Riter, and Mr. Riter understood from this report that the Secretary of the Interior had decided that the lands in Section 36 were not known mineral lands at the date that the grant to California became effective. Thereupon the Department of Justice took no further steps in the matter (R. 72, 73).

Proceedings Before Secretary in Accordance with Practice.

The procedure at the hearing before the Secretary was in accordance with the customary practice (R. 73).

No Rehearing Asked and No Further Action Until Present Secretary Undertook to Set Aside Decision of His Predecessor.

No petition for rehearing of said decision was ever filed and no further action of any kind with reference to said decision was taken by the Department of the Interior until May 8, 1925, when the present Secretary of the Interior, the petitioner here, purported to set aside the decision of his predecessor and directed a new hearing upon the same contest for the purpose of again determining the character of the land (R. 73). It was to enjoin such hearing that the present action was commenced, resulting in a judgment granting the injunction as prayed. That judgment was affirmed by the Court of Appeals and it is this judgment of the Court of Appeals that is now under review.

SUMMARY OF ARGUMENT.

1. The title to this land passed to the State of California if the land was not known mineral land at the date of the approval of the survey.

2. The Interior Department had jurisdiction in the first instance to determine the character of the land at the date of the approval of the survey.

3. The question whether the land was known mineral land under the terms of the grant was put in issue by a written contest or adverse proceeding filed in the usual manner in the Department of the Interior and the sole purpose of the contest was to determine that issue.

4. The contest was heard by the Secretary of the Interior who, after hearing, rendered a formal judgment dismissing the contest. The judgment recited that the contest was dismissed "after consideration of the law and facts."

5. The judgment of the Secretary was judicial in character.

6. The judgment rendered by the Secretary of the Interior was a judgment on the merits and conclusively implied a finding that the land was not known mineral land at the date of the approval of the survey.

7. Neither the transcript of the hearing before the Secretary nor the steps preliminary thereto can be examined for the purpose of impeaching the judgment as a judgment on the merits.

8. If the preliminary steps leading to the hearing and the transcript of the hearing are examined they disclose that the judgment was a judgment on the merits at a hearing held for the purpose of deciding the merits.

9. The judgment cannot be impeached because the Secretary excluded evidence which the petitioner claims was material.

10. This is not a direct proceeding to set aside the judgment of the Secretary. It is an action in which the respondent asks for certain relief, and sets up this judgment as the basis for that relief. Petitioner seeks to overcome the force of this judgment by asserting its invalidity. This is a collateral attack. This judgment, rendered by the tribunal having jurisdiction, is not subject to such collateral attack.

11. The Secretary had jurisdiction to hear the contest without previous trial in the Land Office and the hearing followed the rules of practice.

12. Withdrawals subsequent to the date of the approval of the survey could not affect the state's title to the land.

13. The judgment of the Secretary was equivalent to a patent.

14. After the judicial determination that title had passed to the state the land was no longer part of the public domain and the present Secretary has no jurisdiction over it. His attempt to exercise jurisdiction with respect to the land may be enjoined. Such a suit is not a suit against the United States.

ARGUMENT.

I.

THE GRANT BY CONGRESS TO THE STATE OF CALIFORNIA OF THE 16th AND 36th SECTIONS INCLUDED ALL LANDS NOT KNOWN TO BE MINERAL AT THE DATE OF THE GRANT OR AT THE DATE OF THE APPROVAL OF THE SURVEY IF THE SURVEY WERE NOT APPROVED UNTIL AFTER THE DATE OF THE GRANT.

Mining Co. v. Consolidated Mining Co., 102 U. S. 167;
Wyoming v. United States, 255 U. S. 489.

II.

IN THIS CASE THE SURVEY WAS APPROVED AFTER THE GRANT. THEREFORE, THE TITLE DEPENDED UPON THE CHARACTER OF THE LAND AS KNOWN AT THE DATE OF THE APPROVAL OF THE SURVEY. IF AT THAT DATE THE LAND WERE NOT KNOWN TO BE MINERAL THE TITLE PASSED TO THE STATE. A SUBSEQUENT DISCOVERY OF MINERAL COULD NOT AFFECT THE TITLE.

Wyoming v. United States, 255 U. S. 489.

III.

THE INTERIOR DEPARTMENT HAS JURISDICTION IN THE FIRST INSTANCE TO DETERMINE WHETHER OR NOT THE LAND IS OF SUCH CHARACTER AS TO COME WITHIN THE TERMS OF THE GRANT.

Burke v. Southern Pacific, 234 U. S. 669, Page 686 of opinion.

IV.

THE CONTEST FILED IN THIS CASE FOLLOWED THE USUAL PROCEDURE AND RAISED THE SOLE ISSUE WHETHER OR NOT THE LAND WAS KNOWN MINERAL LAND AT THE DATE OF APPROVAL OF THE SURVEY I. E., JANUARY 26, 1903, AND WHETHER OR NOT THE TITLE THEREFORE HAD PASSED TO THE STATE.

In disputing the State's title to land under the terms of the grant, the method followed by the Department of the Interior is to file in the Department on behalf of the United States a contest (sometimes called adverse proceedings), alleging that the claimant's title to the land is invalid for the reason particularly set forth in the contest. A notice of this contest is served on the claimants to the land and the notice contains a warning that unless the charges are answered within a certain time or if the claimant fail to appear the claim to the land will be cancelled. The form of such notice is found at pages 24 and 25 of the record where the notice concerning the title to Section 36 is set forth.

This contest in this case, filed on behalf of the United States on January 14, 1914, followed the usual practice and charged, after amendment, that the title of the state and its transferees was invalid for the reason that the land was known mineral land at the date of the approval of the survey (R. 24, 25, 35, 36). This was in effect a proceeding by the United States, filed with the tribunal having jurisdiction thereof, to cancel the claimed title of the state and its transferees on the sole ground that the land was known mineral land at the date of the approval of the survey.

The sole purpose of this contest was to procure a judgment of the Department determining whether or not the land was of a character covered by the grant and whether, therefore, the title had passed to the State, or whether the land was still part of the public domain. That it is the validity of the claim that is the ultimate matter put at issue by the adverse proceedings is shown by the form of the notice. The notice in this case contains the following statement:

> "You are hereby notified that the following charges have been filed by a representative of the General Land Office *against the validity of your entry*" (R. 24, 25).

At the end of the notice is the warning that unless the charges are answered,

> "Your said above entry or claim will be reported to the Commissioner of the General Land Office for rejection or cancellation" (R. 25).

It is, therefore, the validity of the claim that is the ultimate matter put at issue by the adverse proceedings.

Cameron v. United States, 252 U. S. 450.

In this case the court said at the top of page 460:

> "The Secretary of the Interior, as the head of the Department, is charged with seeing that this authority is rightly exercised to the end that *valid claims may be recognized, invalid ones eliminated*, and the rights of the public preserved."
>
> *Payne v. New Mexico*, 255 U. S. 367 (p. 371):
>
> "The power conferred is 'judicial in its nature' and not only involves the authority but implies the duty 'to determine the *lawfulness* of the selections.'"

See, also, *Weyerhaeuser v. Hoyt*, 219 U. S. 380, where it was decided that whether the selection was *valid* or *otherwise* was primarily a question for the Secretary of the Interior to determine.

In *United States v. Winona*, 67 Fed. 948, the Circuit Court of Appeals said at page 956:

> "In every case *the ultimate question is whether or not the facts proved show that the claimant is entitled to the land* under the acts of Congress."

So in this contest concerning Section 36, the ultimate question which was to be determined was whether the title of the state and its transferees was valid or whether the land still belonged to the United States.

V.

THE CONTEST OVER THIS SECTION 36 WAS FORMALLY DECIDED BY THE SECRETARY. THAT DECISION IS THE LETTER OF JUNE 9, 1921. IT IS IN THE ORDINARY FORM OF JUDGMENTS RENDERED BY THE DEPARTMENT. SUCH DECISIONS OF THE SECRETARY ARE JUDICIAL IN CHARACTER.

The contest over this section had been filed on behalf of the Government on January 14, 1914. It came on for hearing before the Secretary on June 8, 1921. After the hearing the formal written decision of the Secretary was rendered. The decision is in the form of a letter dated June 9, 1921. (R. 20.) This is the usual and customary form used by the Department in rendering its judgments.

Ary v. Iddings, 12 L. D. 252;
Coder v. Lotridge, 12 L. D. 643;
John H. Reed, 6 L. D. 563;
Anderson v. Northern Pacific, 7 L. D. 163;
Dahlstrom v. St. Paul, 12 L. D. 59;
West v. Hitchcock, 205 U. S. 80, where a letter of the Secretary was referred to by the Court as the Secretary's decision.

Such decisions of the Secretary are judicial in character, partaking of the nature of judgments.

United States v. Schurz, 102 U. S. 378;
Wisconsin Central Railroad Co. v. Price County, 133 U. S. 496;
Wyoming v. United States, 255 U. S. 489;
United States v. Winona, 67 Fed. 948;
New Dunderberg Mining Co. v. Old, 79 Fed. 598;
Steel v. Smelting Co., 106 U. S. 447;

Ellifson v. Phillips, 18 L. D. 299;
Payne v. New Mexico, 255 U. S. 367, see p. 371 of opinion.

VI.

THE JUDGMENT OF THE SECRETARY OF JUNE 9, 1921, WAS A JUDGMENT ON THE MERITS AND THE JUDGMENT SO SHOWS ON ITS FACE.

The judgment rendered by the Secretary recites that the contest was dismissed after a "consideration of the law and the facts." (R. 20.) Thus the judgment shows affirmatively on its face that it was a judgment on the merits. But even had the judgment not contained the foregoing recital, but had been merely a general dismissal without qualifying words, it would still be presumed to have been a judgment on the merits.

Durant v. Essex, 7 Wall. 107;
Lyon v. Perin, 125 U. S. 698;
Armour & Co. vs. Morgan, 270 U. S. 253;
House v. Mullen, 22 Wall. 42;
Scott v. First National Bank of Morris, 285 Fed. 832;
Hickey v. Johnson, 9 Fed. (2d) 498;
Ledbetter v. Wesley, 23 Fed. (2d) 81.

VII.

THE JUDGMENT CONCLUSIVELY IMPLIES A FINDING THAT THE LAND WAS NOT KNOWN MINERAL LAND AT THE DATE OF THE APPROVAL OF THE SURVEY.

In this contest, the United States had rested its right to a judgment cancelling the State's title upon

the single allegation that the land was known mineral land at the date of the approval of the survey. Therefore, the judgment dismissing the contest on the merits conclusively implied a finding that the land was not known mineral land at the date of the approval of the survey.

Fauntleroy v. Lum, 210 U. S. 230;
Last Chance Mining Co. vs. Tyler, 157 U. S. 683;
American Express Co. v. Mullins, 212 U. S. 311.

Later on in this brief (infra Par. XVI), we show that this judgment of the Secretary was equivalent to the issuance of a patent. This court has repeatedly held that the issuance of a patent by the Department, under a law providing for the issuance of a patent but excluding mineral land, implies a finding that the land was not mineral.

Smelting Co. v. Kemp, 104 U. S. 636;
Chandler v. Calumet & Hecla Mining Co., 149 U. S. 79, see page 92;
Burke v. Southern Pacific, 234 U. S. 669, see pp. 691, 693.

In the case of *Buena Vista Petroleum Co. v. Tulare*, 67 Fed. 226, the Court held that a mere listing to the State of Nevada under a grant excluding mineral land was a determination that the lands were not mineral.

VIII.

PETITIONER ATTACKS THIS JUDGMENT, ASSERTING THAT IT WAS NOT ON THE MERITS BUT WAS A DISMISSAL FOR LACK OF JURISDICTION. IN SUPPORT OF THIS ASSERTION, PETITIONER CITES CERTAIN PRELIMINARY DISCUSSIONS AND THE TRANSCRIPT OF THE PROCEEDINGS BEFORE THE SECRETARY. BUT NEITHER THE PRELIMINARY DISCUSSIONS NOR THE TRANSCRIPT CAN BE USED TO CONTRADICT THE PLAIN TERMS OF THE JUDGMENT.

Counsel for petitioner attacks the force and effect of the judgment of the Secretary by asserting that, notwithstanding the language of the judgment itself, the Secretary, in reality, did not intend to decide the case on the merits, but intended to dismiss the case for lack of jurisdiction. In support of the position, that the judgment was not intended to be on the merits, petitioner makes four arguments:

(1) That the parties did not contemplate a hearing before the Secretary on the merits;

(2) That the notice of the hearing issued by the Secretary gave no notice that the case was to be decided on its merits;

(3) That the attorney for the claimants to the land did not ask for a decision on the merits;

(4) That the transcript of the hearing contains certain remarks made by the Secretary during the progress of the hearing which indicate that he did not intend to render a decision on the merits, but intended, on the contrary, to dismiss the contest for lack of jurisdiction.

Even if these contentions were all true, they could not be used for the purpose of contradicting and upsetting the plain terms of the formal judgment itself.

Smelting Co. v. Kemp, 104 U. S. 636.

This was an action to recover possession of certain land in Leadville, Colorado. The plaintiff offered as evidence a patent of the United States under which it claimed. The defendant attacked the validity of this patent, contending that the patent was irregularly issued, *and as proof offered in evidence a certified copy of the proceedings in the General Land Office upon which the patent had been obtained.* Objection was made to this record, but the court overruled the objection and admitted the record.

This Court held that it was error to admit the record of the proceedings for the purpose of discrediting the patent.

Baxter v. Buckholz-Hill Co., 227 U. S. 637.

In this case the District Court had entered a decree in favor of Baxter without prejudice to a new action against him. The Circuit Court of Appeals affirmed the decree but wrote an opinion showing that the case was decided on the merits. A new suit was commenced against Baxter and he set up the previous judgment as a bar, claiming that although the judgment recited that it was without prejudice, it was in reality a judgment on the merits, and relied upon the opinion of the court which was clearly rendered on the merits. In other words, it was contended that the opinion of the court could be looked into in order to change the effect of what the judgment itself showed.

This court said at page 638:

> "The matter was still in the breast of the court; it was free to change its opinion if it saw fit, and it was free to do so by changing the decree without delivering a new opinion to explain what the decree made manifest. If it thought, rightly or wrongly, that the collateral question of the present defendant's liability could not be tried in that case, it properly embodied its decision in the decree. *The decree is the dominant act* and cannot be given a greater effect than it purports to have and than would be warranted by the opinion that the court finally reached."

So in the present case, if the Secretary had in fact indicated by his verbal utterances that he was dismissing the proceeding for lack of jurisdiction, the matter was still in his breast. It was still for him to consider. He still had a right to change his mind, and when he caused the formal written judgment to be entered up, reciting that it was entered after a consideration of the facts, as well as the law, and ordering the case finally closed, it is conclusive that the judgment was rendered on the merits, no matter what his remarks or his opinion might indicate. As a matter of fact, however, every remark that the Secretary made shows that he had nothing in mind except to decide the case on the merits (infra p. 47).

West v. Hitchcock, 205 U. S. 80.

This was a suit for mandamus to require the Secretary to approve the selection of 160 acres to West who claimed to be a member of the Wichita tribe of Indians by adoption. The answer of the Secretary

set up that he had already decided that West was not a member of the tribe, and gave a letter of a certain date as containing his decision. It was claimed that the reasons set forth in this decision were not sound and, therefore, the decision against West was erroneous and could be ignored.

Referring to this the court said at the bottom of page 85:

> "Even if those (the reasons for the decision) given in the letter of July 3, 1901, had been bad, they could not be taken to exhaust the Secretary's grounds. He has not disclosed to the court any statement of those grounds purporting to be exhaustive and complete, and the court cannot make an *inquisition into his mental processes* to see whether they were correct. See *De Cambra v. Rogers*, 189 U. S. 119."

De Cambra v. Rogers, 189 U. S. 119.

The court said at page 122:

> "It is hardly necessary to say that when a decision has been made by the Secretary of the Interior, courts will not entertain an inquiry as to the extent of his investigation and knowledge of the points decided, or as to the methods by which he reached his determination."

In the present case, counsel do go into the mental processes of the Secretary. They quote certain arguments made before the Secretary and certain remarks made by the Secretary and argue therefrom that the Secretary intended to decide something entirely different from what the judgment itself says was decided.

Martin v. Evans, 85 Md. 8; 36 Atl. 258.

The court said:

> "The broad terms of the decretal order dismissing the bill cannot be limited, qualified or restricted by the opinion filed in the equity case. 'The opinion of the judge is the expression of the reasons by which he reaches his conclusions; these may be consistent or contradictory, clear or confused. The judgment or decree is the fiat or sentence of the law, determining the matter in controversy in concise, technical terms, which must be interpreted in their own proper sense. It would, we think, be of dangerous tendency to make the force and effect of the most solemn official acts depend upon the various interpretations which ingenuity might suggest to the most carefully considered language introducing them.' *State v. Ramsburg*, 43 Md. 333. Or, as succinctly expressed in *Durant v. Essex Co., Supra*, the reason for the signing of a decree 'is no part of the judgment itself.' *The decree, and not the opinion is the instrument, through which the court acts. Woods v. Fuller*, 61 Md. 460."

It appears therefore that the transcript of the record cannot be looked into to establish errors nor to contradict the plain words or effect of the judgment that it was rendered on the merits. If the transcript cannot be used to contradict the words or effect of the judgment, it is obvious that neither the argument of counsel nor the preliminary conferences can be used for such purpose.

IX.

HOWEVER IF THE PRELIMINARY PROCEEDINGS AND THE TRANSCRIPT OF THE HEARING BE LOOKED INTO IT DISCLOSES THAT PETITIONER IS WRONG IN EACH ONE OF HIS FOUR CONTENTIONS AND WE FIND

(1) THAT THE PARTIES DID CONTEMPLATE A HEARING ON THE MERITS;

(2) THAT THE NOTICE OF THE HEARING GAVE NOTICE THAT THE MERITS WERE TO BE DECIDED;

(3) THAT THE ATTORNEY FOR CLAIMANTS ASKED FOR A DECISION ON THE MERITS; AND

(4) THAT THE SECRETARY INTENDED TO AND DID DECIDE THE CASE ON THE MERITS.

1. Preliminary Conferences Between the Representatives of the Government and the Representatives of the Transferees Show That Both Parties Were Seeking a Decision on the Merits.

Early in 1921, both the Secretary of the Navy and the Secretary of the Interior had requested the Attorney General to take appropriate action to protect the Government's interest in this section (R. 67). In April, 1921, Assistant Attorney General Riter, who had the matter in charge for the Department of Justice, reached the conclusion that the determination of the title to this section was a matter within the jurisdiction of the Department of the Interior and that the Department of Justice could do nothing except to in-

stitute proceedings to protect the land, either by the appointment of a receiver or by an injunction against further operation,

> "Pending the determination by the Department of the Interior of the known mineral or non-mineral character of said land at the date of the approval of the survey" (R. 68).

Assistant Attorney General Riter, Commander H. A. Stuart of the Navy, who was in charge of the Naval Reserves, and J. Crawford Biggs, an attorney of large experience in this character of litigation, who was called into consultation by the Department of Justice, reached the conclusion that no proceedings were advisable by the Department of Justice,

> "providing that there would be an early hearing in the Interior Department to determine the character of said land" (R. 68).

The representatives of the Department of Justice and of the Navy also concluded that no purpose would be served by the institution of the proceedings by the Department of Justice, providing the operators of the land would agree to suspend further development,

> "pending the speedy determination by the Department of the Interior of the question of title" (R. 68).

Commander Stuart even went further. He was of opinion that no receiver was necessary, and that the issuance of an injunction would be disastrous,

> "in view of the fact that assurance had been given by the Interior Department that there would be an

> early hearing to determine the character of the land" (R. 69).

On May 16th, 17th, 18th, 19th and 20th, 1921, conferences were held between the representatives of the Department of Justice and the Navy and Mr. Sutro representing the claimants to the land (R. 69). On May 23d, Assistant Attorney General Riter wrote a letter to Mr. Raymond Benjamin, Special Assistant to the Attorney General, situated in San Francisco, which letter covered the result of the foregoing conferences.

In this letter, Mr. Benjamin, in speaking of Mr. Sutro's contention, said:

> "The main thing to which he called attention was this: That about the time the State of California acquired title to the section in controversy the regulations of the Interior Department were to the effect that the presence of mineral must be actually known so far as any particular section is concerned, it being immaterial what conditions exist in the surrounding area. He therefore urged that inasmuch as this particular section was not known to contain oil at the time the State acquired title, it was immaterial to enter on a discussion of the presence of oil in the adjoining territory" (R. 78).

It is thus apparent that in the preliminary conferences, Mr. Sutro was not urging that the case be dismissed for lack of jurisdiction, but was making the same argument which he later made to the Secretary. That is, that under the rule of the Department the fact that no mineral was exposed on a school section determined its non-mineral character for the purposes of the grant.

Mr. Riter also said in this letter:

> "The upshot of it all was that it was not for this Department to determine whether this section was known mineral land at the time the State acquired title and that all we were asked to do is to preserve the property *until this question of fact could be settled by the Interior Department.*
>
> * * * * * * * * *
>
> "We regard the Standard Oil Company as entirely solvent and we are of the opinion that a scheme can eventually be worked out by which the drilling operations of that company will be carried on in such a way as to preserve the property from the operation on adjoining ground without exhausting the property of all of its oil contents *pending a determination of this question of fact*" (R. 78).

This again shows that Mr. Riter understood that the Secretary of the Interior was to be asked to decide the question of fact as to whether this section was or was not known mineral land.

At the foregoing conferences an agreement was reached whereby the claimants to the land agreed with the Department of Justice to refrain from further drilling of said land,

> "upon the understanding that a speedy determination would be had in the Department of the Interior with respect to the title to said Section 36" (R. 69).

It was also agreed that the Department of Justice would take no action and that there should be no further development of said lands,

> "until a determination by the Department of the Interior as to the known mineral character of said land" (R. 69).

At the same time an understanding was reached between the representatives of the claimants and the Department of Justice that the claimants to the land,

> "would immediately endeavor to secure from the Department of the Interior an early hearing and determination with respect to the known mineral character of said Section 36 at the date of the approval of the survey thereof and with respect to the title to said Section 36" (R. 69).

After this agreement was entered into the claimants to the land presented to the Secretary of the Interior,

> "their request for a determination with respect to the title to said Section 36" (R. 70).

So we see that petitioner is entirely wrong in his first assertion that the parties did not contemplate a hearing on the merits. On the contrary, the purpose of all the parties was to secure a hearing on the merits and to secure a decision by the Secretary which would settle the question of title.

2. Petitioner Next Contends That the Written Notice of the Hearing Gave No Notice That the Hearing Was to be on the Merits.

But there was no necessity for the Secretary of the Interior to give any notice of this hearing to any other Department of the Government. There is no statute, nor is there any rule of the Department requiring

the service of notice upon any other officer of the United States. The reason for this is that the Secretary of the Interior himself represents the United States in all such proceedings.

> *Knight v. United States Land Association*, 142 U. S. 161, page 181 of opinion.

Notwithstanding that there was no necessity for any notice, nevertheless, the Secretary of the Interior did give a formal written notice to both the Department of Justice and to the Department of the Navy of this hearing (R. 89, 90). This written notice contains the plain statement that there was to be an oral hearing,

> "to determine whether or not said section passed to the State of California under its school grant" (R. 89).

3. Petitioner Next Contends That at the Hearing Itself the Secretary was Not Asked to Render a Judgment on the Merits But on the Contrary was Asked to Dismiss the Case For Lack of Jurisdiction.

The representative of the claimants to the land filed a brief before the Secretary and also made an oral statement of facts and an argument. The brief is set forth in the record at page 79 and the oral statement of facts and arguments at page 37.

It is of no consequence to inquire into what counsel who appeared before the Secretary did or did not say. Indeed, as we have seen, no inquiry whatever into the transcript or brief, is permissible to secure matter to impeach the judgment on collateral attack, but because petitioner's whole case depends upon his argument on this one proposition, we cheerfully follow him into his

chosen field, although convinced that the judgment could not be impeached by either the transcript or the brief, no matter what might be found therein. We, therefore, call to the attention of the Court a few of the matters contained in the brief and in the oral statement, which show that the request made upon the Secretary by the attorney for the claimants was a request for a decision on the merits.

Brief Filed Asked a Decision on the Merits.

On May 26th, Mr. Sutro filed with the Secretary of the Interior a brief accompanied by a map. The letter with which said brief and map were transmitted is set forth on page 80 of the record. This map showed the state of development in 1903 of a very large area of the land surrounding Section 36, and a total want of of development for a radius of miles around the Section. The map so filed showed substantially the same state of development as the map attached to the complaint (R. 70, 16). Preliminarily, it might be asked why Mr. Sutro should have taken the trouble to prepare and present a map showing the oil development of all the surrounding territory at the date of the approval of the survey if he were seeking a dismissal for lack of jurisdiction. The mere fact that the map was filed and discussed before the Secretary, establishes that Mr. Sutro was seeking a decision on the merits as to the known character of the land.

The first paragraph of the brief is as follows:

> "This is the argument in support of the request that the Secretary of the Interior *decide that in view of the previous action of the Department and of its regulations in force in January, 1903, the*

title to said section is vested in the State of California or its grantees." (R. 79).

This is a plainly stated request that the Secretary "*decide*" that "*the title to said section is vested in the State of California or its grantees.*" Counsel distort this plain request for a decision that the title has vested in the state into a request that the Secretary make no decision as to title but dismiss the case for lack of jurisdiction.

The ground upon which Mr. Sutro asked the decision as to title is set forth in the paragraph, as follows:

> "The previous action of the Department and its regulations in force in January, 1903."

"The previous action of the Department" was, of course, the restoration to agricultural entry made by the Department in 1904. The regulations referred to were the regulations which prohibited a state from surrendering a school section as mineral without proof that there was an actual exposure of mineral on the ground. That regulation is as follows:

> "RULE 2. The State will not be permitted to make selection in lieu of land within a school section alleged to be mineral in character and for that reason excepted from its grant, whether returned by the Surveyor General as mineral or otherwise, in the absence of satisfactory proof that the base land was known to be chiefly valuable for mineral at the date when the State's right thereto would have attached, if at all. The proof must show the kind of mineral discovered upon the land and the extent thereof, when and by

> whom the discoveries were made, etc., etc. If in any case the proof does not clearly show that the base land was known to contain valuable mineral deposits and to be chiefly valuable on account of such deposits at the date the State's right would have attached thereto, a selection in lieu thereof will not be permitted." (R. 4.)

The restoration to agricultural entry, together with the reason for such restoration, made a Departmental record of the fact that no mineral had been exposed on the section. Mr. Sutro argued that this fact coupled with the regulation which prohibited a state from surrendering a school section without such exposure of mineral entitled him to ask that the Secretary decide that the title to the section had vested in the state.

After stating many facts as to the known character of the land and citing many cases as to what constitutes known mineral land, Mr. Sutro again says in his brief (R. 87);

> "There is no reason why this *decision as to the title of the state* should not be made now."

This would be an extraordinary statement for an attorney who was arguing that there could be no decision because there was no jurisdiction.

Mr. Sutro then elaborated his argument that under the regulations of the Department a school section could not be considered as known mineral land unless there was an actual exposure of mineral on the land, and that the taking of evidence as to geological conditions concerning this section would be useless, because, it being an admitted fact that no mineral was

exposed, the decision must be that the land was not known mineral land, no matter what such geological evidence might show.

Mr. Sutro then said (R. 87):

> "*Certainly the equities of this situation entitle us to a decision now on the question which in any event will ultimately have to be decided by the Secretary of the Interior.* The issue which we now tender can be decided just as well at this time as at the end of a protracted hearing on the facts."

Here the Secretary was asked to decide at once the question as to the known mineral character of the land and consequently the validity of the state's title. It was pointed out that in any event the Secretary must ultimately make that decision and that he could as well make it then without a long hearing on the facts, because there was one admitted fact which made all other facts immaterial, that is, there was no exposure of mineral on the land nor indeed for many miles distant from the land.

Mr. Sutro next recites certain facts, and then says (R. 88):

> "These facts, I submit, offer equities which entitle the state to ask that the Secretary of the Interior *should exercise his clear jurisdiction* and *decide* the question presented at this time."

This shows that Mr. Sutro not only did not claim that the Secretary had no jurisdiction, but in positive terms he asserted that the Secretary had "clear jurisdiction."

On record page 88, Mr. Sutro says:

> "In this case, the government must prove that the land was mineral. According to the tests and regulations of the Government, itself, that proof is not possible and therefore we respectfully submit it should be *decided that the state's title to this section is valid.*"

Mr. Sutro is here referring to the difference between lieu selections under grants to railroads and school land grants. He has pointed out that under grants to railroads, or lieu selections thereunder, the railroad is the moving party, and assumes the burden of proving that the land is non-mineral in order to secure title. Under school grants there is nothing for the state to do or to suggest; the presumption is that title has passed, and if the United States contests, it has the burden of proving that the land was known to be mineral. He then says that such proof cannot be made in this case because of the admitted fact that no mineral was exposed on the section and under the rules of the Department the land must necessarily be determined to be not known mineral land.

In other words, Mr. Sutro is not saying that the Secretary has no jurisdiction to decide, but he asks affirmatively that the Secretary decide that the state's title is valid because of the one controlling fact that there was no exposure of mineral on the land.

Oral Statement and Argument of Mr. Sutro Also Asked for a Decision on Merits.

The opening paragraph of the oral statement made by Mr. Sutro at the hearing on June 8th is as follows:

> "This is an application, Mr. Secretary, to have the Department of the Interior *exercise its jurisdiction* to determine that Section 36 in Township 30 south, Range 23 E, in Kern County, in California, is a school section in place, title to which is vested in the state and that the title has been so vested since the day of the survey and the approval of that survey" (R. 37).

Mr. Sutro is here following his brief, and he now asks the Department to "*exercise its jurisdiction to determine*" that title has "*vested in the state.*" This is entirely inconsistent with the theory that his argument was that the Secretary had no jurisdiction to decide the question of title.

Mr. Sutro then enumerated a long list of facts concerning this land, which he contended established the fact that it was not known mineral land in 1903. Among other facts so enumerated by Mr. Sutro are the following:

(1) In 1916 this section 36 was tendered to the Navy and that the Navy rejected the tender because the land was not oil land and that the Navy's oil expert testified before the Senate Committee in 1916,

> "that this was not commercial oil land at all and was of no value to the Navy." (R. 39.)

(2) Owing to the great oil shortage, the Standard Oil Company drilled this land and discovered oil in 1919. (R. 39.)

(3) The surveyor's mineral return was based upon his notes that asphaltum exudations occurred throughout the township. Mr. Sutro then stated that these notes were not true, saying,

> "But the fact is that there is no asphaltum outcropping in this township and there never has been and I don't think that is disputed." (R. 40.)

In passing, it might be observed that that fact was agreed to at the hearing and is agreed to here, the Agreed Statement of Facts reciting that,

> "no mineral was exposed in this township prior to the year 1911" (R. 66).

(4) Mr. Sutro then stated that the surveyor confused this township with an adjoining township where asphaltum exudations did occur. (R. 40.)

(5) Mr. Suto then handed to the Secretary a piece of calcareous sandstone which he stated was a sample of the only outcropping in the township. (R. 40.)

(6) Mr. Sutro then stated that under the decisions of the Land Office and the Supreme Court of the United States, the Surveyor's report is of very slight consequence. (R. 40.)

(7) Mr. Sutro then stated that the decision of this court in the Southern Pacific case, which Mr. Sutro called the Elk Hills Case, was not controlling because in that case the railroad had committed a fraud and he called attention to the distinction between railroad grants and school grants. (R. 41.)

(8) Mr. Sutro then referred to the map which he had previously filed with the Secretary and called attention to the fact that it showed the condition of the surrounding land in 1904, one year after the approval of the survey, and the fact that this map showed no development within a number of miles of this section. (R. 41.)

(9) Mr. Sutro then called attention to the regula-

tion of the Department, which prevented a state from surrendering a school section and selecting another section in lieu thereof, unless there was an actual exposure of mineral on the section surrendered, and argued therefrom that if the state could not surrender a section as mineral, it ought to be allowed to to keep it as non-mineral. (R. 42.)

(10) Mr. Sutro then referred to a certain contest which had been pending in the Department on a section in the vicinity of this Section 36 and said that in 1901 the Department had ruled in that case the land would not be classed as mineral unless mineral was exposed in paying quantities. (R. 44.)

(11) Mr. Sutro then said,

> "Now so much for this question as to whether or not this section in the absence of the discovery of mineral could be considered a mineral section. I think it could not" (R. 44).

Mr. Sutro here states in plain language that all his previous argument, consisting of eight pages of the record, has been devoted to the question as to whether or not this land under the rules of the Department was known mineral land.

Nine-tenths at least of both Mr. Sutro's brief and his oral argument was devoted to the proposition that the land was not known mineral land on account of a number of physical facts which he recited, and particularly on account of the rule of the Department that a school section could not be considered mineral unless there had been an actual discovery or exposure of mineral.

The remaining portion of his argument, he devoted to a consideration of the effect of the restoration to

agricultural entry in 1904. Concerning this restoration, we think the logical conclusion from the argument is that Mr. Sutro was putting it forward as evidence of the fact that to the Department at least the land was not known mineral land. It is obvious that if the Department had known this was mineral land, the restoration in 1904 would never have been made. The restoration was at least some evidence that the land was not known mineral land.

It is true that several times Mr. Sutro referred to this restoration as an adjudication or a determination, but never once did he argue that the Department had lost jurisdiction. Over and over again the Secretary was asked to exercise his clear jurisdiction and decide the case.

And finally since counsel claim that the brief filed before the Secretary and the argument made before him are to be considered as arguments that the matter had previously been decided and that the Secretary should dismiss the contest for lack of jurisdiction by reason of the previous action of the Department, we ask counsel for petitioner, what purpose they attach to the following statements of fact made to the Secretary in 1921, none of which bore on the previous action of the Department or its effect:

From the brief:

(1) The history of the title of the section after 1904 (R. 80, 81);

(2) The offer of the land in 1916 to the Navy and the rejection of that offer on the ground that the land was not mineral (R. 81);

(3) The subsequent development of the section (R. 81);

(4) The argument as to the binding force of the regulations of March 6, 1903, requiring proof of discovery of mineral, the extent thereof, etc., etc., before a school section could be classified as mineral (R. 83, 86);

(5) The argument as to the Surveyor General's return (R. 86).

From the transcript:

(1) The certificate of the register and receiver given in 1908 that the section was free of all claim by the United States (R. 38);

(2) The offer of the section to the Navy in 1916 and its rejection (R. 39);

(3) The drilling of the land in 1919 (R. 39);

(4) The surveyor's return and the reason for his notation (R. 40);

(5) The want of legal effect to be attached to a surveyor's return (R. 40);

(6) The Elk Hills decision and its inapplicability (R. 41);

(7) The maps used at the hearing showing the state of development of the surrounding land at the date of the approval of the survey (R. 41, 42);

(8) The introduction in evidence of a specimen of the only outcropping known on Section 36—a calcareous sandstone—white in color (R. 40);

(9) The regulations of March 6, 1903, and their effect in requiring proof of discovery, etc., to sustain a mineral classification (R. 42);

(10) The argument as to the binding force of this regulation in determining that this section was non-mineral in 1903 (R. 42, 43);

(11) The argument based on the Tulare Case (R. 44);

(12 The absence of fraud (R. 46);

(13) The argument on the equities (R. 46);

How did these facts and arguments concern the finality or lack of finality of the proceedings culminating

in the Department's order of 1904, relieving the section from suspension? It is apparent that all the foregoing facts and arguments could have been used only in support of the request for a decision on the merits. Mr. Sutro repeatedly asserted that the Secretary had jurisdiction to decide the contest, and he repeatedly asked for a decision that the state's title was valid. So that it is established that the Secretary was in fact asked to decide the case on its merits, not to dismiss it for lack of jurisdiction.

4. Remarks of Secretary Indicate That He Considered Nothing But the Merits of the Case.

Since counsel have suggested that the Secretary did not intend to decide the case upon the merits but intended to dismiss the proceedings for lack of jurisdiction *we here note every remark the Secretary made during the progress of the hearing:*

(1) The first remark made by the Secretary was when he inquired about the litigation against the Southern Pacific Railroad and asked if the contest as to the **Section 36 was commenced** at approximately the same time (R. 39). Obviously this question could have had nothing to do with the Secretary's jurisdiction or lack of jurisdiction.

(2) The Secretary next asked about the surveyor's field notes as to outcroppings (R. 41). Manifestly this refers to the merits and not to any alleged lack of jurisdiction.

(3) The Secretary then stated that Mr. Sutro's theory was that if the United States, upon the state's application to select other land in lieu of a school section, would not have classified the section as mineral,

the United States could not thereafter upon a subsequent discovery claim the section as mineral (R. 43). It is apparent that this remark related to the merits and not to the lack of jurisdiction.

(4) The Secretary then asked: "When did you drill this land?" (R. 45). Obviously this question was directed to the merits.

(5) The Secretary next stated that Mr. Sutro was asking the Secretary that if the Secretary were convinced that the rule as stated by Mr. Sutro were correct, to so hold at that time without the delay of a trial in the land office (R. 46). Mr. Sutro had argued that the rule of the Department which would not permit a state to surrender a school section as mineral unless there was an actual exposure of mineral, prevented any school section from being determined to be known mineral land unless there was such an exposure. The Secretary was referring to this statement of the rule and this argument which Mr. Sutro had made. This obviously referred to the merits and not to lack of jurisdiction.

(6) The Secretary then asked when the contest was directed and what was the cause of the long delay. (R. 46). Manifestly, this could have had nothing to do with jurisdiction.

(7) After Mr. Sutro had stated that the chief of the field division had said that the Department had no faith in the proceedings and suggested this as the reason for delay, and after Mr. Sutro had conceded that the statement of the chief of the field division did not affect the *merits*, the Secretary agreed and said that the chief's statement would be immaterial, but that the fact that the proceedings were brought in 1914 and allowed to lie idle until after the discovery

of oil and then revived was a matter of interest to him (R. 47.) Obviously this could have nothing to do with a lack of jurisdiction.

(8) The Secretary then asked Assistant Secretary Finney if the State of New Mexico could make a valid lease of its school sections for mineral (R. 48). This also must have been directed to the merits and could have had nothing to do with an alleged lack of jurisdiction on account of the restoration to agricultural entry in 1904.

(9) The Secretary then pressed Mr. Finney and twice asked him as to whom it must be known that the land was mineral in order to constitute known mineral land (R. 49). It is once more perfectly obvious that the Secretary was considering the merits of the case. He was trying to find out what constituted known mineral land and to whom the fact of mineral must be known in order to make it known mineral land.

(10) The Secretary then stated that the geological conditions would remain the same at all times and, if geological conditions, without some one having knowledge thereof, would be sufficient to establish land as known mineral land, then the state never could get a title to any school section which might afterwards prove to be mineral (R. 49). It is apparent that the Secretary, in view of the rule of the Department that a school section could not be considered as mineral unless there was an actual exposure of mineral, was not impressed with Mr. Finney's argument that geological conditions, should be taken into consideration. In any event, however, the Secretary was considering nothing but the merits.

(11) He next stated that the government ought to

classify the land (R. 49). Again this could have nothing to do with jurisdiction.

(12) Finally he asked the Government's representatives if Mr. Sutro's statement of the case was admitted (R. 49). The agreed statement of facts shows that this inquiry of the Secretary was directed to the facts stated by Mr. Sutro (R. 72).

We have thus shown that every word which the Secretary uttered indicated that at all times he was considering the merits of the case and not once did he make any inquiry or make any statement which had the slightest reference to the question of jurisdiction.

The main argument made by Mr. Sutro was that the land must be held to be not known mineral land because there was no exposure of mineral. Mr. Sutro argued that under the regulations of the Department that one fact was decisive of the question. He contended that evidence of geological conditions would be immaterial because of the one controlling fact that no mineral was exposed. He distinguished the Southern Pacific and Diamond coal cases where geological conditions were held to be admissible from all school section cases, pointing out that the regulation of the Department requiring an exposure of mineral applied to school land only and that school land was not involved in either the *Southern Pacific* or *Diamond Coal* case. The authorities he cited contained the argument that under the decisions and regulations of the department the utmost definiteness was required in the proof of the mineral character of a school section to entitle the state to surrender it as a mineral section—differentiating school land cases from those cases in which applicants for lieu land could not select land which they had reason to believe was mineral as in

the Southern Pacific case cited by the Government.

The argument made by Mr. Sutro was certainly a very forceful argument. But it is entirely immaterial whether it was a sound argument or otherwise. A judgment cannot be upset because the attorney securing the judgment makes a faulty argument. Nor can a judgment be upset upon a collateral attack because the judge rendering the judgment has come to an erroneous conclusion.

X.

THE PROCEEDINGS BEFORE THE SECRETARY WERE IN ACCORDANCE WITH THE RULES OF THE DEPARTMENT AND IN ACCORDANCE WITH THE PRACTICE. ALL PARTIES AGREED THAT THERE WAS AN EXIGENCY REQUIRING A PROMPT DECISION. THE SECRETARY HAD JURISDICTION TO DECIDE THE CONTEST WITHOUT PRELIMINARY HEARINGS BY SUBORDINATE OFFICERS. THE GOVERNMENT HAD FULL OPPORTUNITY TO AND DID PRESENT ITS CASE.

On pages 73 and 74, counsel for petitioner complains that the method of procedure adopted by the Secretary prevented the Government from presenting its case and from putting in any evidence on the question of fact as to whether the land was or was not mineral and that such procedure was against the rules and practice of the Department, and that therefore the judgment rendered on the merits is a void judgment.

The first answer to this argument is that the pro-

cedure adopted by the Secretary was not contrary to the Rules of Practice nor to the procedure but in conformity therewith.

The Rules of Practice contain the following:

> "RULE 85. Motion for the exercise of supervisory power will be considered only when accompanied by positive showing of extraordinary emergency or exigency demanding the exercise of such authority.
>
> "In proceedings before the Secretary of the Interior the same rules shall govern, insofar as applicable, as are provided for proceedings before the Commissioner of the General Land Office.
>
> "RULE 86. No rule here prescribed shall be construed to deprive the Secretary of the Interior of any direct or supervisory power conferred upon him by law" (R. 90, 91).

That an exigency existed demanding the exercise of the supervisory power of the Secretary is shown throughout the record. The Department of Justice was considering the extraordinary remedy of having a receiver appointed and an injunction issued against further operation of the land. At the time the property was a highly developed property producing large quantities of oil and there was also danger of drainage from adjoining wells. A speedy decision as to the title to this land was imperative. A real exigency existed which was recognized by every one. The agreement reached between Mr. Suto and the representatives of the Department of Justice and of the Navy, that no suit on behalf of the Government should be filed and that further development should be suspended was dependent upon securing an early decision by the Department as to the character of the land and there-

fore a decision as to where the title vested (R. 69). The exigency was known to every one and was stated by Mr. Sutro orally at the hearing before the Secretary as follows:

> "MR. SUTRO. A delay here is a taking of property. I mean by that that we are now under bond, so to speak, to the Department and we are faithfully observing it, of course, not to use this property, except so far as to protect it. I have given the Assistant Secretary Mr. Finney my assurances about that and that is to be confirmed in writing. That means that for two or three years, we cannot deal with the property. It not only means that; it means that in the meantime the proceeds must be impounded" (R. 46).

The very exigency, which the rules provided for, existed, and the hearing, therefore, was in accordance with the rules.

The Agreed Statement of Facts shows that the hearing was also in accordance with the practice. This Agreed Statement sets out that while it has never been the practice of the Secretary to take the testimony of witnesses on disputed questions of fact,

> "It has been the practice of the Secretary of the Interior to permit presentations in cases pending before him, including statements of agreed facts and of facts contained in the records, followed by arguments thereon and to permit the introduction of documentary evidence and to render decisions upon the record and upon such presentations" (R. 73).

At the hearing before the Secretary, Mr. Sutro made a statement of facts. These facts were agreed to by

the representatives of the Government (R. 72). There was an argument upon these facts and some documentary evidence was introduced (the maps and records of the Department). There was no probative fact that was disputed. It is true that the ultimate fact as to whether this land was or was not known mineral was disputed but the probative fact that there was no exposure of mineral, together with the other probative facts, stated by Mr. Sutro, were not disputed. There was thus an exact compliance with the practice of the Department.

Government Representatives Had Opportunity to and Did Present Their Case.

A second answer to counsel's argument is that the representatives of the Government did have an opportunity to and did present their case. Thus Mr. Finney contended that certain evidence should be considered (R. 48, 49). The secretary ruled that it was immaterial. There was thus a hearing in accordance with the rules and in accordance with the practice upon an agreed statement of facts.

But in any event a judgment is not void because the judge who tried the case rules out certain offered evidence.

The Secretary of the Interior Being the Head of the Department Had Jurisdiction to Decide the Contest Even Though There Had Been No Previous Trial in the Local Land Office and No Hearing Before the Commissioner.

It has been uniformly held both by the Department and by this court that the Secretary of the Interior can decide any matter pending in the Department at any stage of the Proceeding, that he has complete jurisdiction to do this and that he need not follow the course of holding a trial in the Land Office, followed by an appeal to the Commissioner, and finally by an appeal to the Secretary.

Knight v. United States Land Association, 142 U. S. 161;
Hawley v. Diller, 178 U. S. 476;
Lake Superior Ship Canal Co. v. Patterson, 30 L. D. 160;
Harvey M. LaFollette, 26 L. D. 453.

XI.

THE RULE OF THE DEPARTMENT THAT SCHOOL LAND WOULD NOT BE CONSIDERED MINERAL UNLESS THERE WAS AN ACTUAL EXPOSURE OF MINERAL WAS NOT ABROGATED.

At pages 35-37 of his brief, counsel argues that the rule adopted by the Department on March 6, 1903, to the effect that a State would not be allowed to surrender a school section on the ground of its mineral character unless there was an actual exposure of mineral was not followed by the Department. In support of his statement, he cites *Kern Oil Co. v. Clotfelter*,

30 L. D. 583; *ibid*, 33 L. D. 291; and the decision of Secretary Hitchcock, 34 L. D. 194.

It is to be observed that the rule of the Department applies only to school sections and the right of a state to surrender a school section as mineral. Neither of the decisions cited deal with school sections.

In the *Clotfelter* case, Clotfelter endeavored to surrender land of which he was the legal owner and which had been conveyed by a patent from the United States. The land so owned was situated within the limits of a public forest reservation. Clotfelter sought to exchange this land for other land selected by him in the Kern River Oil field. To effect the exchange it was necessary to show that the land selected was not mineral. The ruling of the Department was that under such circumstances evidence of geological conditions on adjacent land was admissible.

The decision by Secretary Hitchcock on October 26, 1905, reported in 34 L. D. 194, had nothing to do with the right of a state either to retain or surrender a school section, but covered only the procedure to be followed in determining whether lands should be classified as coal lands or grazing lands. That Secretary Hitchcock did not intend to change the rule with regard to school land is shown by the fact that on January 10, 1906, less than ninety days after the date of the letter concerning the classification of coal lands, he approved new regulations for school lands containing the old regulation requiring an *exposure* of mineral before a state could surrender a school section, 34 L. D. 365.

Counsel also cite the *Diamond Coal Case*, 233 U. S. 236, and the *Southern Pacific Case*, 251 U. S. 1. Neither of these cases had anything to do with school lands. In

the coal case the Government sought to set aside patents which the coal company had secured to land immediately adjacent to its coal mines under a statute which required proof of the non-mineral character of the land before a patent could be issued. It was evident that a fraud had been perpetrated upon the Government and this court held in that case that evidence as to geological conditions on adjacent territory was properly admissible.

In the *Southern Pacific Case*, the Southern Pacific had obtained patents to certain sections of oil land under its grant from Congress. Under this grant, it was necessary for the Southern Pacific to prove that the land for which patent was requested was not mineral. This court held that certain officials of the Southern Pacific had perpetrated a fraud upon the Government in making affadavit that the land was non-mineral when they believed the land was actually mineral. The court held that evidence as to geological conditions was properly received against the Railroad which had initiated the proceedings for the patents under attack upon representations that the land was non-mineral.

The rule of the Department was on its face limited to school sections. None of the cases cited have any application to school sections. Just what the purpose of the Department was in applying one rule to school grants and an entirely different rule to other grants, is immaterial. The fact is that such a distinction was made by the rules of the Department. Doubtless, some good reason existed for the distinction. At the hearing before the Secretary, Mr. Sutro offered what seems to be a reasonable explanation, that it was to prevent the states from continuing the practice of surrender-

ing worthless land as mineral and receiving valuable lieu land therefor (R. 43).

Regulation Was Urged Upon Secretary Not as a Determination But as a Reason for Deciding That Land Was Not Known Mineral.

On pages 33-37 of his brief, counsel makes an elaborate argument that the regulation of March 6, 1903, was not a determination of the non-mineral character of the section in question. With this statement, we are in full accord. We have never made any contrary claim. Nor did Mr. Sutro make any other claim, either in his brief or in his oral argument before the Secretary in 1921. He insisted that this rule should be followed by the Secretary in making his decision as to whether or not this land was known mineral land and he argued that this rule, coupled with the admitted fact that there was no exposure of mineral compelled the holding by the Secretary that the land was not known mineral.

It is obvious that this general regulation, which as counsel for petitioner state was a rule of evidence, could not be a determination of the non-mineral character of any particular piece of land and Mr. Sutro did not make any such absurd argument. The fact, however, that he laid such emphasis upon this regulation and upon the fact that no mineral was exposed on the section or in the entire township nor for many miles distant indicates clearly that he was not seeking a dismissal of the contest for lack of jurisdiction, but was seeking a judgment on the merits that the land was not known mineral land.

XII.

THE STATE'S OFFER TO SURRENDER THIS SECTION AND THE WITHDRAWAL OF THAT OFFER DID NOT CONSTITUTE A WAIVER. AN UNACCEPTED TENDER OF A SCHOOL SECTION COULD NEITHER CREATE NOR DEFEAT RIGHTS IN THE LAND.

On pages 33 and 35 of counsel's brief, the offer by the state of California on March 6, 1903, to surrender this section and to select another section in lieu thereof and the subsequent withdrawal of that offer is discussed. We are unable to determine exactly what it is that counsel claims for these circumstances, but if they have any effect, apparently they would support the state's title. The statute gave the right to the state to select other land in case a sixteenth or thirty-sixth section was lost because of its mineral character. The Interior Department, up to the time of the adoption of the regulations of March 6, 1903, had uniformly held that the mere fact that the survey had returned the section as mineral was sufficient prima facie evidence of its mineral character to entitle the state to surrender the section and select another as indemnity therefor. 23 L. D. 423.

On March 6, 1903, this uniform ruling of the Department was changed by the adoption of the regulations previously set forth which prevented a state from surrendering a section as mineral, notwithstanding the surveyor's mineral return, unless there was an actual exposure of mineral on the ground. While this rule was adopted in the city of Washington on March 6, 1903, it must be apparent that the state of California had not heard of it on March 7, 1903, when it filed its

offer to surrender this section in the Local Land Office at Visalia, California. It is also to be observed that at the time this offer to surrender was filed, the land was still under suspension from agricultural entry. In April, 1904, the land was restored to agricultural entry and therafter, in August, 1905, the state withdrew its offer of this section by offering another section as lieu for the section which it had previously selected (R. 32).

So the whole transaction with refernce to this tender by the state amounts to this. Under the uniform rulings of the Department, the state had a right to surrender any section returned as mineral by the surveyor and select another section in lieu thereof. Acting under these rulings of the Department, the State made its offer to surrender this section. In the meantime, however, the Department had changed its rulings and the state was blocked in its effort to surrender this section and secure another section in its stead. Thereupon it did the only thing left for it to do—it withdrew its offer of surrender and later sold the land to other persons.

Nothing can be predicated, in respect to the State's title, on this state of facts, except the inference that the State recognized the order of April 5, 1904, as a classification of the land as non-mineral, and in view of the further action of the Department in promulgating the regulations of March 6, 1903, withdrew the land as a mineral base because it had no proof of its mineral character. It was argued to the Secretary that if the State could not surrender the land as mineral it ought to be allowed to retain it as non-mineral.

Years afterwards the purchasers, at great expense, developed the land and discovered oil. In 1921, after

large sums of money had been expended and numerous oil wells drilled, the Government, for the first time, actively asserted a claim to this land which had been offered to it and which it had refused to accept eighteen years before.

The cases cited by counsel for the Government at page 34 of their brief merely decided that an approved lieu selection estops the state from claiming title to the proferred base land and that state land included in federal forest or other reservations may be surrendered and the state title waived.

But obviously an unapproved tender can neither defeat nor create rights in the tendered land.

John W. Schofield, 42 L. D. 48;
State of New Mexico, 46 L. D. 217.

XIII.

THE EQUITIES ARE WITH RESPONDENT AND THE FACT THAT THESE EQUITIES WERE URGED BEFORE THE SECRETARY SHOWS TRANSFEREES WERE SEEKING DECISION ON THE MERITS. SUBSEQUENT WITHDRAWALS COULD NOT ALTER THE STATE'S RIGHTS.

On pages 38-45, counsel for petitioner claim that the equities in this case are adverse to the respondent. In support of this argument, he asserts that respondent was bound to have knowledge of the official records of the Department and the various withdrawals and classifications of this land which took place before the respondent actually drilled the land for oil. It is, undoubtedly, true that the respondent was charged

with notice of these various public records but respondent also knew that the title of the state and its transferees must be determined as of January 26, 1903, many years before the first withdrawal was made.

The Withdrawals Made Years After the State's Title Vested Could Not Affect That Title.

The State's title was to be determined by a determination of the known character of the land in January, 1903. Withdrawals made years afterwards could not affect the State's right to this land.

Payne v. Central Pacific, 255 U. S. 228.

Equities Argued by Mr. Sutro Show That He was Seeking a Judgment on the Merits.

On page 44, counsel for petitioner asserts that the equities claimed by respondent furnished the dominant note in Mr. Sutro's brief and argument before the Secretary in 1921. The equities which Mr. Sutro advanced then, and which even now seem appealing, were substantially as follows:

The fact that the land was withdrawn from agricultural entry in 1900 and after investigation was restored to agricultural entry in 1904 because no mineral had been discovered thereon; the fact that in 1903 the Department adopted the regulation which prevented the State of California from surrendering this section because there was no exposure of mineral thereon; the fact that in 1908 the state sold this land prior to any of the withdrawals; the fact that in 1909 the respondent purchased the land; the fact that in 1914 the government filed a contest against this section, challenging the state's title but never served it, allowing it to re-

main pigeon-holed until 1921; the fact that the land was offered to the Navy in 1916 and rejected on the ground that it was not oil land; the fact that respondent commenced drilling in 1916 and discovered oil in 1919; and the fact that after the discovery of oil the United States even then did nothing with its contest, but allowed the land to be fully developed at an expenditure of many hundreds of thousands of dollars before it took any action towards claiming the land.

Mr. Sutro could not have been asserting these equities in support of a request for a dismissal for lack of jurisdiction. The equities claimed could have had no bearing at all on the question of jurisdiction, but they had a material bearing on the merits of the case.

XIV.

THE JUDGMENT IS NOT VOID BECAUSE THE SECRETARY CONSIDERED CERTAIN EVIDENCE IMMATERIAL. A JUDGMENT CAN NEVER BE ATTACKED IN A COLLATERAL PROCEEDING FOR MERE ERROR.

This argument of counsel that this judgment is void because the Secretary excluded evidence as to geological conditions means that if a tribunal having jurisdiction of a case makes an erroneous ruling in excluding evidence, then the judgment is absolutely void, notwithstanding that no effort has been made to correct the error by appeal or by other direct attack.

If this argument be sound then every judgment can be attacked in a collateral proceeding for mere error, and if the second court, trying the collateral proceeding, be of opinion that the former court made erroneous rulings as to evidence, then the former judg-

ment can be held to be void because the second court differs with the first court as to the correctness of such rulings. Such a contention violates the whole law of judgments. It is fundamental that a judgment cannot be attacked collaterally for errors or irregularities or upon any ground except that it is absolutely void.

Counsel completely misconceive the theory of the hearing before Secretary Fall. The theory of that hearing was that the admitted fact that there was no exposure of mineral determined the case and that the result could not be changed no matter what other evidence might be offered. This was argued to the Secretary, and he evidently concurred in that view. The Secretary surely had jurisdiction to determine what evidence he considered relevant and what irrelevant.

We submit that he had the same power to reject the opinions of geologists as evidence of the mineral or non-mineral character of this school section as the present Secretary would have to admit them, and that the prior Secretary's decision that such evidence was not pertinent is as binding upon his successor as the decision of the present Secretary to receive and consider such evidence would be binding upon a succeeding Secretary.

A judgment rendered by a tribunal having jurisdiction is invulnerable against collateral attack on the ground of errors, irregularities, mistakes, erroneous conclusions of law or on any other ground, except that it is absolutely void.

Freeman on Judgments, Section 305.

XV.

PETITIONER'S ATTACK ON THIS JUDGMENT IS A COLLATERAL ATTACK. THE RULE THAT JUDGMENTS ARE IMPERVIOUS TO COLLATERAL ATTACK ON ANY GROUND, EXCEPT THAT THEY ARE VOID, APPLIES TO JUDGMENTS OF THE DEPARTMENT OF THE INTERIOR.

This is not an action which seeks a decree setting aside the judgment of the Secretary, but in this case the respondent sets up the judgment rendered by the Secretary as the basis for certain relief asked by respondent. The petitioner seeks to overcome the force and effect of this judgment by attacking its validity. This is a collateral attack.

A collateral attack is any attack upon the validity or effect of a judgment by some other method than a direct proceeding having for its purpose a setting aside or a vacating of the judgment. Motions for a rehearing, for a review, or for a new trial are direct attacks. An appeal to a higher tribunal is a direct attack. A bill in equity to set aside the judgment is a direct attack. All of these have for their purpose a setting aside of the judgment. But a contention that a judgment rendered in another proceeding is invalid for any reason, where no affirmative relief setting the judgment aside is sought or can be had, is a collateral attack.

The rule that judgments rendered by a tribunal having jurisdiction is invulnerable against collateral attack on any ground except that the judgment is void applies to judgments of the Secretary of the Interior.

United States v. Schurz, 102 U. S. 378;
Knight v. United States Land Association, 142 U. S. 161, see page 182 of opinion;
Noble v. Union River Logging R. R., 147 U. S. 165;
United States v. Winona, 67 Fed. 948, see p. 956;
Burke v. Southern Pacific, 234 U. S. 669, see page 691.

In the latter case, the court said on page 691 of the opinion:

> "When a patent issues it is to be taken, upon a collateral attack, as affording conclusive evidence of the non-mineral character of the land and of the regularity of the acts and proceedings resulting in its issue, and upon a direct attack, as affording such presumptive evidence thereof as to require plain and convincing proof to overcome it."

The court then answered a certain question certified to it as follows:

> "2. Does a patent to a railroad company under a grant which excludes mineral lands, as in the present case, but which is issued *without any investigation upon the part of the officers of the Land Office or of the Department of the Interior as to the quality of the land, whether agricultural or mineral*, and without hearing upon or determination of the quality of the lands, operate to convey lands which are thereafter ascertained to be mineral?
>
> Answer. A patent issued in such circumstances is irregularity issued, undoubtedly so, but as it is the act of a legality constituted tribunal and is done within its jurisdiction, it is not void and

> therefore passes the title (*Noble v. Union River Logging R. R.*, 147 U. S. 165, 174, 175), subject to the right of the government to attack the patent *by a direct suit* for its *annulment* if the land was known to be mineral when the patent issued."

So in the present case if the Secretary had rendered this judgment without any hearing at all and without any investigation whatever, the judgment would still be valid against the attack now made upon it. The only remedy of the government is a direct suit to set aside the judgment which is a valid, controlling judgment until so set aside.

We have thus established that the judgment of the Secretary is presumed to have been rendered on the merits, that as a matter of fact it was rendered on the merits, and that it cannot be collaterally attacked for errors, irregularities or mistakes, even if any were made.

XVI.

THIS JUDGMENT OF THE SECRETARY IS EQUIVALENT TO A PATENT. IT CANNOT BE SET ASIDE EXCEPT IN A DIRECT PROCEEDING BROUGHT FOR THAT PURPOSE.

Neither a patent nor an act equivalent to a patent can be set aside except in a direct proceeding brought for that purpose. *Burke v. Southern Pacific*, 234 U. S. 669; *Noble v. Union River Logging R. R.*, 147 U. S. 165.

A consideration of various cases decided by this court determines that various kinds of acts of the Department are equivalent to the issuance of a patent.

Such acts of the Department either operate to transfer the title of the land from the United States to the claimant or are a confirmation of a title that has already vested. Sometimes such act, which is equivalent to a patent, is a mere certification of a list to the state, sometimes the mere approval of a survey, sometimes the approval of a selection, sometimes the approval of a map, sometimes the approval of a railroad right-of-way, sometimes an act of Congress and sometimes a decision of the Department. But whatever the act taken by the Department, it is held to be the equivalent of a patent, provided there is no further action for the Department to take.

Shaw vs. Kellogg, 170 U. S. 312, page 341 of opinion;
Michigan Land & Lumber Co. v. Rust, 168 U. S. 589, page 592 of opinion;
Chandler v. Calumet & Hecla Mining Co., 149 U. S. 79;
Noble v. Union River Logging R. R., 147 U. S. 165;
Del Pozo v. Wilson Cypress Co., 269 U. S. 82;
Morrow v. Whitney, 95 U. S. 551;
Boquillas Cattle Co. v. Curtis, 213 U. S. 339;
Landeau v. Hanes, 21 Wall. 521.

In *United States v. Schurz*, 102 U. S. 378, in speaking of the point when the title passes, this court said at page 402:

"It is equally clear that this period is at the latest, precisely *when the last act in the series*, essential to the transfer of title has been performed. Whenever this takes place, the land has ceased to be the land of the government, or to speak in

> technical language, the legal title has passed from the government and the power of these officers to deal with it has also passed away."

So, in this case, there was nothing further for the Interior Department to do. There was no provision for the issuance of a patent. Their was no provision for any approval of any list. In fact, there was no provision for the doing of any further act in connection with the title. The grant was a grant *in praesenti*. The title passed to the state, unless the land was known mineral land at the date of the approval of the survey. The United States filed a formal proceeding to have it determined that the title had not passed to the state. That proceeding came on for hearing before the tribunal having jurisdiction to hear it. The hearing was held and the judgment was rendered that the title had passed from the United States and that the state's title had vested. There was no other act that the Department could take; there was no further paper for it to sign; there was no entry to be made; there was nothing further of any kind or character to be done. The last act in the transmission of the title to the state had been performed, and under the authorities cited, the title had passed to the state.

XVII.

THE JUDGMENT HAVING DETERMINED THAT THE TITLE HAD PASSED TO THE STATE, THE LAND IS NO LONGER PART OF THE PUBLIC DOMAIN, THEREFORE THE PRESENT SECRETARY HAS NO JURISDICTION OVER IT. HIS ATTEMPT TO HOLD HEARINGS OR MAKE ORDERS WITH REFERENCE TO THIS LAND IS BEYOND HIS JURISDICTION AND MAY BE ENJOINED AS AN UNWARRANTED CLOUDING OF TITLE.

On page 26 of his brief, counsel cites a number of cases to the point that one Secretary can reverse the action of his predecessor, but in each one of these cases the order reversed was an order which had not passed or confirmed the title to the land. It is undoubtedly true that where the title has not passed from the Government, but the land is still a part of the public domain, the Secretary has jurisdiction over the land and can make orders concerning it, even to the extent of reversing some former order. But it is equally true that where the title has passed, then the Secretary has no jurisdiction over the land and cannot reverse an action of his predecessor, nor in fact can he make any order concerning the land because he has no jurisdiction over it.

When this judgment of the former Secretary was entered it was equivalent to the issuance of a patent and the land ceased to be a part of the public domain. The present Secretary, therefore, has no jurisdiction over the land. Having no jurisdiction, he cannot set aside the judgment of his predecessor, nor can he make

any other order with reference to the land, because the land, itself, is beyond his jurisdiction.

Moore v. Robbins, 96 U. S. 530;
Noble v. Union River Logging R. R., 147 U. S. 165;
United States v. Schurz, 102 U. S. 378.
Lane v. Watts, 234 U. S. 525;
United States v. Stone, 2 Wall. 525.

XVIII.

THIS SUIT IS NOT AGAINST THE UNITED STATES, BUT IS AGAINST THE SECRETARY TO PREVENT HIM FROM ACTING WHERE HE HAS NO AUTHORITY AND TO PREVENT HIM FROM CLOUDING THE TITLE TO LAND OVER WHICH HE HAS NO JURISDICTION.

On pages 75 and 76 of his brief counsel cite a number of cases to the point that this action is in reality one against the United States and, therefore, cannot be maintained. But all the cases which hold that the United States is a necessary party to an action against the Secretary concerning lands, are cases where the title to the land had not passed from the United States, and the land was still a part of the public domain. Of course, under such circumstances, the Secretary of the Interior has jurisdiction over the land and the United States owning the title is a necessary party to any suit concerning such land. But where the title has passed from the United States and the land is, therefore, no longer a part of the public domain, then the action, as in this case, is merely against the Secretary of the Interior to prevent him from acting where he has no jurisdiction and to prevent him from casting

an unwarranted cloud upon respondent's title. Such an action can be maintained and the United States is not a proper party.

Moore v. Robbins, 96 U S. 530;
United States v. Schurz, 102 U. S. 378;
Noble v. Union River Logging R. R., 147 U. S. 165;
Lane v. Watts, 234 U. S. 525.

CONCLUSION.

The judgment of the Secretary of the Interior of June 9, 1921, was a judgment on the merits, which was equivalent to a patent. This judgment cannot be held void because of supposed errors in the consideration of evidence, or in procedure. The only method of setting aside this judgment is by direct attack upon the judgment itself. Such was the method pursued by the United States in the Southern Pacific Case, upon which counsel relies, and such has been the method pursued in every successful attack upon a judgment of the Department where the Department had jurisdiction. The lower courts, in well reasoned opinions, have held that the Secretary decided the case upon the merits and that this decision of the Secretary was not open to collateral attack.

Up to the present time, the government of the United States has made no attack upon this judgment, but the present Secretary of the Interior takes it upon himself to attempt to set aside a valid judgment of his predecessor, and to again hear and to again decide the very case which his predecessor has already heard and has already decided. This cannot be done. As this Court said, as far back as the case of *United States v. Stone*, 2 Wall. 525:

> "One officer of the land office is not competent to cancel or amend the act of his predecessor. That is a judicial act and requires the judgment of a court."

If the proper law officers of the Government are dissatisfied with this judgment, they can bring a suit in a court of equity to set it aside, but until such action is taken and until the judgment is so set aside, it remains a valid judgment, controlling in this and in all other cases where its effect is material.

We respectfully submit that the judgment of the lower court should be affirmed.

OSCAR SUTRO,
McKENNEY & FLANNERY,
LOUIS TITUS,
Attorneys for Respondent.

Enid